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THE

BENGAL TENANCY ACT:

BEING

ACT VIII OF 1885

(AS AMENDED BY ACT VIII OF 1886),

WITH

NOTES AND ANNOTATIONS, JUDICIAL RULINGS, THE RULES MADE UNDER THE ACT BY THE LOCAL GOVERNMENT, THE HIGH COURT, AND THE REGISTRATION DEPARTMENT, AND THE FORMS OF REGISTERS PRESCRIBED BY THE BOARD OF REVENUE.

BY

R. F. RAMPINI, M.A.,
Bengal Civil Service, of the Inner Temple, Barrister-at-Law, and District and Sessions Judge, Burdwan, Bengal;

AND

M. FINUCANE, M.A.,
Bengal Civil Service, Director of Land Records and Agriculture, Bengal.

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PREFACE TO THE SECOND EDITION.

In submitting to the public a second edition of our work on the Bengal Tenancy Act, we beg to say that the book has been almost entirely re-written. In the present edition we have discussed in the notes many points which the working of the Act has shown to be important or obscure. We have considerably increased the number of judicial rulings under the old law to which reference is made, and we believe we have cited every ruling under the present Act that has up to date been reported, as well as several unreported decisions. In quoting the titles of these rulings, we have adopted the so-called Hunterian system of spelling, and have omitted all unnecessary prefixes.

In the appendices we have printed the Government Rules under the Act with the Board of Revenue's instructions thereon, the forms of Registers under the Act prescribed by the Board of Revenue, the High Court Rules and the Rules of the Registration Department under the Act.

Our best acknowledgments are due to the Hon'ble Mr. Reynolds, late senior member of, and to Messrs. Cotton and Buckland, Secretaries to, the Board of Revenue, who have given us free access to the correspondence in the Board's office relating to the working of the Act, which has enabled us, we hope, to make the work one of practical utility to executive, as well as to judicial, officers, legal practitioners, and all who have occasion to consult, or avail themselves of, the provisions of the Act.

R. F. R.
M. F.

April, 1889.

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Sched. III (2, *a*)	31	.....	Sec. 6, Act VI (B.C.), 1862.
Sched. III (2, *b*)	29, 58	32, 92	

INTRODUCTION.

In the following pages we propose merely to give a brief summary of the circumstances which led to the passing of Act VIII of 1885, and of the principal changes made by it in the Rent Law of Bengal.

The question of a revised Rent Law for Bengal had been under consideration for a very considerable time. The provisions of Act X of 1859, which, up to the passing of the Act, either in their original form, or as re-enacted in Act VIII (B.C.) of 1869, governed the relations of landlord and tenant in Bengal, were soon found to be defective. The principal faults of Act X of 1859 have been said to be that it placed the right of occupancy, which it recognized in the tenant, and the right of enhancement, which it recognized in the landlord, on a precarious footing. It gave, or professed to give, the raiyat a right which he could not prove, and the landlord one which he could not enforce. It also, according to the landlords, made the recovery of their just dues a difficult, protracted, and sometimes an impossible task.

As early as 1863, an amendment was suggested by Sir Barnes Peacock, the Chief Justice of Bengal, and by the Revenue Authorities of the North-Western Provinces. In 1873, disturbances broke out in the Pubna district, in Eastern Bengal, owing to the raiyats leaguing together to resist illegal exactions on the part of the zamindars,—short measurements, illegal cesses, and forced delivery of agreements to pay enhanced rents being the main grievances they complained of. The Lieutenant-Governor of Bengal, Sir George Campbell, then expressed an opinion that Government would be eventually compelled to deal with the whole question of the relations of landlord and tenant in Bengal.

Subsequently, in 1876, Sir R. Temple proposed to introduce a bill to define the principles on which the rights of occupancy-raiyats and tenure-holders should be fixed, to simplify the procedure for realizing arrears of rent in undisputed cases, to extend the definition of occupancy-raiyats, and to render the interest of a raiyat of that class liable to sale for default in paying rent, and transferable by private agreement. But in 1877, before his proposal could be fully considered and given effect to, Sir R. Temple was succeeded, as Lieutenant-Governor of Bengal, by Sir Ashley Eden, who, abandoning his predecessor's project, considered it advisable merely to introduce a bill, providing for the realization of undisputed arrears, and to defer all further amendment of the law for the time being. This, however, was found to be impracticable; and, in February 1879, a majority of the Select Committee on the bill recommended that the revision of the whole of the Rent Law should be undertaken. Accordingly, in 1879, a Commission to prepare a digest of the existing statute and case-law, and to frame the draft of a consolidating bill, was appointed. Meanwhile, a Committee of experienced Behar officials, indigo-planters, and zamindars had been sitting under orders of Government to consider and devise remedies for the abuses prevailing in the relations between landlord and tenant in Behar. They submitted their report in March 1879, and proposed, as they did not consider that the requirements of the case could be properly met by a mere amendment of the then existing law, that the whole of the Rent Law should be re-cast. The report of the Behar Committee was referred to the Rent Law Commission, who, on the 19th June 1880, submitted their Report with a draft Landlord and Tenant Bill, which purported not only to amend, but to consolidate, the whole Rent Law of Bengal. The bill was, however, not accepted in its entirety by Government. A second draft was prepared by the Hon'ble Mr. Reynolds, late senior member of the Board of Revenue. A third draft was drawn up under the superintendence of Sir Ashley Eden. Subsequently, a bill was drafted by the Government of India, and introduced into Council, on the 2nd March

1883, by the Hon'ble Mr. Ilbert, the Legal Member of the Governor-General's Council. A further bill was afterwards drafted, and the present Act did not finally pass through Council, and receive the assent of the Governor-General, till the 14th March 1885.

Before alluding, as we propose now very briefly to do, to the principal changes made by this Act in the Rent Law of Bengal, we must repeat that the project of codifying the Rent Law and consolidating the statute and case-law on the subject was abandoned by the framers of this Act. The task undertaken by the Rent Law Commission had to be given up owing to its difficulty and the opposition it excited.

The present Act, therefore, while materially altering the previously prevailing law, does not profess to, and does not, do more than merely consolidate existing enactments, and to a limited extent embody the case-law on several disputed and hitherto undecided points. It is not, therefore, a complete digest of the law of landlord and tenant in Bengal, the task of compiling such a digest, in short, of codifying the Rent Law of Bengal, remaining still to be accomplished. The present Act "was accepted by the Government of Bengal," it is said in a minute of Sir Rivers Thompson, the late Lieutenant-Governor of Bengal, on his administration of the province, "rather as an instalment of the necessary legislation than as providing a full solution of the difficulties of the problem. But that this want of completeness and finality was not merely natural but inevitable was forcibly urged by Mr. Ilbert in the course of the debate on the Bill, and the question can hardly be better summed up than in the words he used:—'What the Council have to consider,' said the Honourable Member, 'as practical men is, not whether this is an ideally perfect measure, not whether it is a final settlement of questions between landlord and tenant in Bengal, not whether it is likely to usher in a millennium either for the zamindár or for the raiyat, but whether it represents a step in advance, whether it does something substantial towards removing admitted defects in the existing law, whether it does not give some substantial form of security to the

tenant, some reasonable facilities to the landlord. It is because I believe that the measure, however it may fall short of ideal perfection, does embody substantial improvements in the existing law that I commend it to the favourable consideration of the Council.' "

Turning to the changes made by this Act in the existing law, we would again explain that we do not pretend to give here a detailed or exhaustive account of them. We have explained these changes more fully under the sections, or at the end of the chapters, in which they occur. We here briefly summarize them, merely to facilitate the comprehension of the scope and effect of the present Act.

The principal changes made by this Act in the previous law are as follows :—

(1) That a raiyat becomes a "settled raiyat," and acquires rights of occupancy in all the lands he holds in a village, provided he has held any land for twelve years in the same village. It is not now necessary that he should have held the same particular land, or that he should have held all the land for twelve years, as was the case before. If he has held any land for twelve years in a village, he acquires occupancy-rights in all the land he holds, or may in the future hold, in that village.

(2) In any proceeding between a raiyat and his landlord, it is to be presumed that the raiyat is a "settled raiyat," until the contrary is proved or admitted.

(3) The grounds on which a settled raiyat's rent may be enhanced have been modified, and the enhancement of his rent by suit has certainly been facilitated ; but, on the other hand, the enhancement of his rent by contract has been restricted, and a raiyat cannot now contract himself out of almost any of the rights conferred upon him by this Act.

(4) All notices of enhancement have been abolished by this Act, owing to the difficulty experienced in drawing them up in accordance with the provisions of the former law, as well as of proving their service. The institution of the enhancement-suit is now all the notice of enhancement required to be given to the tenant.

(5) If an occupancy-raiyat's rent has once been enhanced by contract or suit, no suit for the further enhancement of his rent will lie until after the expiry of fifteen years.

(6) An occupancy-raiyat or his landlord is empowered to apply for commutation of rent payable in kind to a money-rent.

(7) A non-occupancy-raiyat can now be ejected at the will of his landlord, only if he has been admitted to the occupation of the land under a registered lease, and, after the service on him of a six months' notice to quit, and within six months of the expiration of the term of his lease.

(8) A non-occupancy-raiyat, who objects to pay an enhanced rent, can now have his rent fixed by the Court. If the raiyat refuses to pay the rent so fixed, he can be ejected. But if he agrees to pay it, he is entitled to remain in occupation of the land at the rent for five years.

(9) A landlord is now bound to retain the counterfoil of every receipt he gives to a tenant, which receipt has to contain certain specified particulars, and every tenant is now entitled, at the end of each year, to a receipt in full, or a statement of account up to the close of the year. Further, a receipt which does not contain substantially the particulars required by law will be presumed to be a receipt in full up to date.

(10) Provision has been made for tenants making improvements in their holdings and for their recovering compensation for them in the event of eviction. A system of registering improvements, whether made by the tenant or the landlord, has also now been introduced.

(11) Power has now been given to a landlord, with the sanction of the Collector, to acquire the land of any of his tenants' holdings for building, religious, educational, or charitable purposes.

(12) No tenant can now be ejected except in execution of a decree.

(13) Provision has been made for the appointment of common managers in the case of disputes arising between the co-owners of estates.

(14) Act VIII (B. C.) of 1879, the Act under which all settlements of Government and other estates have hitherto been made by Government, is repealed by this Act. Government is consequently placed on the same footing as other proprietors with regard to its tenants, except that it retains the certificate procedure for the speedy recovery of the arrears of rent due to it. Further, as regards the record of the rights and the fixing of the rents of tenants of lands under settlement, such settlements will have ordinarily to be made under the provisions of this Act.

(15) In Chapter X provision is made empowering the Local Government, with the previous sanction of the Governor-General in Council, to order that a survey and record-of-rights be prepared in respect of the lands in any local area by a Revenue-officer, and when any such records-of-rights and settlement of rent is proceeding in any local area, the ordinary Civil Courts are precluded from entertaining any suit for the alteration of the rent, or the determination of the status of any tenant.

(16) Power is given to the Local Government, on its own motion, or on the application of a tenant, to survey and define a proprietor's private or demesne land, in which rights of occupancy cannot be acquired. Restriction has also been placed on the conversion of ordinary *raiyati* land into *khamar* land, so as to prevent a proprietor, in future, from putting obstacles in the way of the acquisition of occupancy-rights by his tenants.

(17) The landlord's power of distraint has been curtailed. A landlord can now only distrain through the Civil Court, and, notwithstanding the distraint, the tenant is entitled to reap, gather, and store the produce, and do anything necessary for its preservation.

(18) A landlord can no longer harass his tenant by instituting successive suits for arrears of rent against him. Three months must elapse between each successive rent-suit.

(19) A decree for arrears of rent can no longer be executed by any one who has not acquired the landlords' interest in the land; but, on the other hand, the holder of a decree for

arrears of rent is no longer subject to any restrictions in the execution of his decree. He is not now bound to proceed in the first instance against the moveable property and person of his judgment-debtor, then, against the tenure or holding itself on which the arrears have accrued, and, finally, against the other immoveable property of the tenant, but is at liberty to execute his decree in any way that is lawful under the Civil Procedure Code ; while the tenant's tenure or holding is hypothecated for the rent, and no transfer of it is valid, while the arrears of rent which have accrued on it remain unsatisfied.

(20) The disabilities of minority and lunacy do not apply to rent-suits.

The results of the working of the Tenancy Act are thus summed up in the minute on Sir Rivers Thompson's administration already alluded to.

"As already stated, the Act came into operation on the 1st November 1885, and has, therefore, been too short a time in force for a full estimate of the success or otherwise of its working to be made. The principal work done in revenue offices in connection with the Act has related to the issue of notices and payment of landlords' fees on transfers of tenures. A petition was addressed to Government on the subject of the working of the provision that tenants holding at a rent fixed in perpetuity must give notice and pay a fee to the landlords, through the Collector, on transferring their holdings. It was alleged that raiyats not holding at fixed rates adopted this procedure, thereby creating evidence, which in future might be accepted as proof that they really occupied the privileged position which they claimed. It has been pointed out, however, that this fear does not rest on any solid foundation. There were in 1885-86, 223 cases of appraisement of produce, which occurred principally in the Patna Division. The result has been reported to have been so far satisfactory. During the year 1886-87, the Board of Revenue prepared a set of rules for settlement procedure with special reference to changes in this procedure, which have been effected by the Act.

"The provisions of the Act on the subject of receipts for rent have produced a very immediate and striking effect, and have given matter for comment in every part of the province. It was part of the enactment on this subject that rent receipts shall contain certain stated particulars; and further, that if a receipt did not contain substantially the particulars required, it shall be presumed, until the contrary is proved, to be an acquittance in full of all demands up to date. Such a change affecting every payment of rent throughout the province, and tending to bring old disputes to a head, naturally gave rise to much trouble and misunderstandings at first. The misunderstandings have been already in many cases cleared away,* and by degrees only those cases will remain which the law was intended to meet, *viz.*, those in which the landlord has been keeping his accounts so as to show a higher rent than that which is authorised by law, those in which illegal cesses have been collected, and those in which through former neglect the real rent has never been ascertained. On such estates the first effect of the new law may be to increase contention with the ultimate effect of producing a satisfactory settlement. Even in these cases what brings matters to an issue is merely the insisting on the discharge of an obligation which existed under the old law, and has always been considered necessary in Bengal—the entry in the receipts of the period in respect of which rent is paid. This is a necessary form of honesty and fair dealing insisted on in business of every kind, and if its observance in transactions between Bengal zemindars and their raiyats causes friction, that is the best proof that the precaution is necessary either to clear up uncertainty, or to prevent fraud.

"With the exception of these difficulties in regard to notices of transfer and to receipts, the working of the new law has not appeared as yet to be likely to be attended by any such disturbance of the relations between landlords and tenants as was apprehended by some of those who were

* A new form of receipt has now been drawn up—see Sch. II.

opposed to the introduction of the measure. The other provisions of the Act appear to be working smoothly, recourse is being had to the sections relating to the appraisement of produce rents, and to the registration of improvements, and some applications have been received for the settlement of rents. At present, however, there are no materials for forming an opinion on the operation of some important sections of the law, such as the publication of price lists, the sale of tenures subject to encumbrances, and the modified procedure for distraint. The real benefits of such a measure as the Tenancy Act are to be looked for, not in the number of cases in which application may be made to the courts to enforce its provisions, but in the peaceful acceptance by all classes of the principles which underlie it, that the landlord is to be secured in the enjoyment of his fair rent and that the tenant is to be maintained in the possession of his rightful holding."

The above quoted observations may be said to represent the official view of the working of the Bengal Tenancy Act up to the date on which they were written, as described in published documents, and though we do not altogether agree with all that has been said in the above note, yet, on the other hand, we have no wish here to combat any of the views expressed in it. We would, however, say that it is our impression that the undisturbed relations at present existing between landlord and tenant in Bengal may, to some extent, be due to a want of comprehension of the provisions of the Act. However this may be, we may hazard with some confidence, an expression of the opinion that, without a survey and record-of-rights under Chapter X of the Act, no much greater beneficial effect will result from the present enactment than from the former laws on this subject, and that those of its provisions, which were intended to benefit and protect the raiyats, will produce no effect at all, in that direction, in the province of Behár.

BENGAL SECRETARIAT LIBRARY

THE

BENGAL TENANCY ACT, 1885,

BEING

ACT VIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the 14th March* 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows :—

This Act is not, and does not purport to be, a complete Code of the law of Landlord and Tenant. It merely amends and consolidates previous enactments,—its principal objects being (1) to give reasonable security to the tenant in the occupation and enjoyment of his land, and (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent.

CHAPTER I.

PRELIMINARY.

Short title.

1. (1) This Act may be called "The Bengal Tenancy Act, 1885."

Commencement.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous

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sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.

By a notification, dated September 4th, 1885, published in the *Calcutta Gazette* of September 9th, 1885, the Lieutenant-Governor, with the sanction of the Governor-General in Council, declared that this Act should come into force on November 1st, 1885. But by Act XX of 1885 the operation of secs. 61 to 64, relating to deposit of rent, and of Chap. XII, relating to distraint, except such of those provisions as confer power to make rules, was postponed to the 1st February, 1886.

Local extent.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

XIV of 1874.

Rent Law of Calcutta.—In the town of Calcutta, the relations of landlord and tenant are regulated by the Indian Contract Act (IX of 1872). But when the parties are Mahomedans or Hindus, then, the relations of landlord and tenant will, under sec. 17, chap. 70, 21 Geo. III, be regulated by the laws and usages of the defendant, provided they are not inconsistent with the provisions of the Contract Act, in which case the provisions of the Contract Act will prevail (*Madhab Chandra Paramanik* v. *Rajkumar Das*, 14 B. L. R., 76; 22 W. R., 370; *Rassik Lal Madak* v. *Loknath Karmokar*, I. L. R., 5 Calc., 688).

Rent Law of Orissa and the Scheduled Districts.—The Local Government has not yet extended the whole or any portion of this Act to the Division of Orissa or any part thereof. In the greater part of the districts of the Division of Orissa the settlement is a temporary one, and Act X of 1859 and its amending Acts (VI, B. C., of 1862, and IV, B. C., 1867) are in force. The Scheduled Districts of Bengal, according to the First Schedule of the Scheduled Districts Act (XIV of 1874), are the districts of Darjeeling and Jalpaigori, the Hill Tracts of Chittagong, the Santhal Parganas, the mehals of Angul and Banki in Orissa, and the districts of the Chutia Nagpur Division. The rent law prevailing in these districts is as follows: In the Darjeeling district, Act X of 1859 has hitherto been, and for the present continues to be, in force. The district of Jalpaigori consists of two tracts of country, namely, of a tract which may be described generally as the tract lying to the south of the river Teesta, which formerly belonged to the Rungpore district; and of a tract which may be described generally as the tract lying to the north of the Teesta, and which was annexed from Bhutan in 1866. In the portion of the district which formerly belonged to the Rungpore district, the settlement is permanent, and Act X of 1859 is now in force, and will, for the present,

continue to prevail there. In the tract north of the Teesta, there is a special Act in force, namely, Act XVI of 1869 (The Bhutan Dvars Act). This may be briefly described as no law at all, for it merely excludes "the ordinary Civil Courts from the cognizance of suits relating to immoveable property, revenue and rent," without laying down any law or rules for the guidance of the officers appointed by Government to exercise jurisdiction in this tract of country. The Bhutan Dvars Act still prevails in this portion of the Jalpaigori district, notwithstanding the passing of this Act. The Hill Tracts of Chittagong have, by Act XXII of 1860, been removed from the jurisdiction of tribunals established under the general Regulations and Acts; but, by letter No. 2461, dated April 17th, 1867, the Local Government has directed that the Courts in the Hill Tracts shall be guided by the general tenor and spirit of the Code of Civil Procedure and such laws as may be applicable. In the Santhal Parganas, Reg. III of 1872, made under the thirty-third of Victoria, Cap. 3, the Bengal Regulations mentioned in its Schedule, and the Santhal Parganas Rent Regulation, 1886, are in force. The mehal of Banki in Orissa was, but is no longer, a scheduled district. It has been annexed to the district of Katak by Act XXV of 1881. The mehal of Angul in Orissa is still a scheduled district, but Act X of 1859 has not been formally extended to it. In the districts of the Chutia Nagpur Division, the provisions of the Chutia Nagpur Tenures Act (II of 1869, B. C.) are in force. In Manbhum, Act X of 1859; and in Hazaribagh, Lohardugga and Singbhum, the Chutia Nagpur Landlord and Tenant Procedure Act (I of 1879, B. C.) also prevail.

The Bengal Tenancy Act may, under sec. 5, Act XIV of 1874, be extended to any of the Scheduled Districts of Bengal, or to any part of such district.

Rent Law of Assam.—The districts of Assam are no longer under the administration of the Lieutenant-Governor of Bengal, and consequently are not affected by this Act. It may, however, be useful to note here that, by the decision of the High Court in the case of *Prasidha Narain Koer* v. *Man Koch* (I. L. R., 9 Calc., 330),* it is now settled that the provisions of Act X of 1859 are not in force in the Assam Valley districts, *viz.*, Goalpara, Kamrup, Darrang, Nowgong, Sibsagar, and Lakhimpur. In these and all the other districts of Assam, except Sylhet, the law on the subject of rent is in an unsettled and uncertain state. But in the district of Sylhet, now one of the districts of the Chief Commissionership of Assam, but formerly under the administration of the Lieutenant-Governor of Bengal, the provisions of Act VIII of 1869, B. C., now prevail, having been extended to it by Government Notification of the 24th February, 1870 (see *Calcutta Gazette* of March 2nd, 1870, p. 361). They continued in force in Sylhet on its incorporation with the Chief Commissionership of Assam under Government Notification, No. 1111, of the 22nd August, 1878 (see *Government of India Gazette*, of August 24th, 1878, Part I, p. 533), and, of course, continue to prevail there since the passing of this Act.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Repeal.

Dates of commencement of various rent laws.—Act X of 1859 came into operation on the 29th April, 1859. It was amended, on the 1st May, 1862, by

* See also I. L. R., 4 Calc., 517; 6 Calc., 196; 7 Calc., 441.

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Act VI of 1862, B. C., which was, in its turn, amended by Act IV of 1867, B. C., on the 21st May, 1867. Act VIII of 1869, B. C., came into operation on the 13th April, 1870, corresponding with the 1st Bysakh of the Bengali year 1277 (see Government Notification of 24th February, 1870, published in the *Calcutta Gazette* of 2nd March, 1870). All these Acts are repealed in the territories within which this Act came into operation on the 1st November, 1885. Besides these, another Act, it will be observed on reference to Schedule I, is also repealed by this Act, *viz.*, Act VIII of 1879, B. C., which was an Act "to define and limit the powers of Settlement Officers." This is an important change; as the repeal of that Act, taken in connection with the definitions of "landlord" and "estate" in sec. 3, makes it clear that this Act applies to Government estates. Further, in the great majority of cases, settlements of estates and tenures belonging to, or managed by, Government or the Court of Wards, have now to be made under the provisions of Chap. X of this Act. The present Act, therefore, contains, not only the Law of Landlord and Tenant, but the Settlement Law of Bengal, in the districts to which it applies, whenever a settlement involves an enhancement of rent, and it is intended that such enhancement shall be binding on the raiyats.

Regulations partially repealed.—Certain Regulations are also partially repealed by this Act. The portions of these Regulations and the subject-matter of each section repealed are as follow:—

REG. VIII OF 1793.

Sec. 51. Enhancement of Talukdars. Penalty for exaction.
Sec. 52. Right of Proprietors to let remaining lands; conditions to be specific. Penalty for exactions.
Sec. 53. Amilnamahs necessary.
Sec. 54. Abwabs to be consolidated with asl.
Sec. 55. No new abwabs. Penalty.
Sec. 64. Instalments to be regulated by harvests.
Sec. 65. No engagements contrary to this Regulation.

REG. XII OF 1805.

Sec. 7. Period for delivery of pottahs in Cuttack.

REG. V OF 1812.

Sec. 2. Proprietors may grant leases for any period.
Sec. 3. And in such form as the contracting parties prefer; but cesses not to be imposed.
Sec. 4. Leases may not be annulled for collusion in case of attachment or sale without decision of Court.
Sec. 26. Judge may appoint manager of *ijmali* estate.
Sec. 27. Removal of such manager.

REG. XVIII OF 1812.

Preamble. Recites doubts as to sec. 12, Reg. V of 1812.
Sec. 2. Leases grantable for any period and at any rent.
Sec. 3. Leases remain in force notwithstanding partition, transfer, &c.

REG. XI OF 1825.

Sec. 4. Cl. 1.—The words "nor if annexed to a subordinate tenure" to end of the clause. This part of the clause provides that an under-tenant shall not be considered exempt from an increase of rent for land annexed to his tenure by alluvion.*

* Field's Rent Law Digest, p. xxi.

(2) When this Act is extended to the division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

As to the enactments now in force in Orissa, see the note to the previous section.

(3) Any enactment or document, referring to any enactment hereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Proceedings commenced under old law.—In sec. 6, Act I of 1868 (The General Clauses Act), it is provided that "the repeal of any Statute, Act or Regulation shall not affect "anything done, or any offence committed, or any fine or penalty incurred or any *proceedings* commenced, before the Repealing Act shall have come into operation." The meaning of the word "proceedings" in this section has formed the subject of discussion in many cases. In *Ratan Chand Shri Chand* v. *Hanmantrav Shivbakas* (6 Bom. H. C. R., 166, A. C. J.), it was said that the words "proceedings commenced" in sec. 6 of the General Clauses Act include a suit in which a decree has been given, and that the word "proceedings" must be taken to include all the proceedings in the suit from the date of its institution to its final disposal. In *Ranjit Singh* v. *Meherban Koer* (I. L. R., 3 Calc., 662), Garth, C. J., quoted the above ruling of the Bombay High Court with approval, and said that the words "any proceeding" in sec. 6, Act I of 1868, must be held to include proceedings in appeal. In the same case, it was ruled by Jackson, J., that sec. 6 of Act I of 1868 covered all proceedings taken in execution of decree, which had been commenced before Act X of 1877 came into force. In "In the matter of *Ratansi Kalianji*" (I. L. R., 2 Bom., 148), it was held that a judgment-debtor imprisoned in execution of a decree under Act VIII of 1859 was not entitled to be released under the provisions of Act X of 1877 on the coming into operation of the latter Act. In *Thakur Prasad* v. *Ahsan Ali* (I. L. R., 1 All., 668), it was said that "proceedings in execution of decree instituted under Act VIII of 1859 are to be governed by the provisions of that code," notwithstanding its repeal by Act X of 1877 (see also *Uda Begam* v. *Imam-ud-din*, I. L. R., 2 All., 74; *Nadir Hossein* v. *Bissen Chand Bassarat*, 3 C. L. R., 437; and *Mahomed Hossein* v. *Abdullah*, I. L. R., 3 Calc., 727). Again, in *Haro Sundari Debi* v. *Bhajo Hari Das* (I. L. R., 13 Calc., 86), it was said that the words "any proceedings commenced before the repealing Act shall have come into operation" in sec. 6, Act I of 1868, include an appeal against a decree made before the passing of the repealing Act, as such appeal must be considered a proceeding in the original suit." Then, in *Satghari* v. *Mujidan* (I. L. R., 15 Calc., 107), it was said that the word proceedings in sec. 6, Act I of 1868, as applied to a suit, mean the suit as an entirety, that is, down to the final decree, and include a second appeal. Further, in *Mangal Prasad Dichit* v. *Girija Kant Lahiri*

(I. L. R., 8 Calc., 51), it has been ruled by their Lordships of the Privy Council that "an application for the execution of a decree is an application in the suit in which the decree was obtained." This ruling was followed in the case of *Behari Lal* v. *Gobardhan Lal* (I. L. R., 9 Calc., 446); but in the case of *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (I. L. R., 7 Bom., 459), it was said by West, J.: "We think that where a decree has been obtained, the application for execution initiates a new set of proceedings, and, therefore, the rule of the General Clauses Act (I of 1868) is not to be held to govern all the remotest ministerial consequences of a suit arising in applications made years afterwards according to the procedure in force at its institution, but only to bring under the same law such series of proceedings as group themselves naturally together, as, *e. g.*, those on a particular application." This ruling of the Bombay High Court does not seem, however, to have been followed by the Calcutta High Court; for in *Jagmohan Mahto* v. *Lachmessar Singh* (I. L. R., 10 Calc., 748), it was said by Mitter, J. (Norris, J., concurring): "As to proceedings being identified with suit, it seems to me that we held that proposition to be correct on the authority of the Privy Council decision in *Mangal Prasad Dichit's* case, and after hearing the arguments in this case, and after considering the judgment quoted, I still adhere to that opinion,—*viz.*, that an application for execution of a decree is an application in the suit which resulted in the decree. That was distinctly held in *Mangal Prasad Dichit's* case, and we are bound by that decision." The Privy Council decision in *Mangal Prasad Dichit's* case was also followed in *Becharam Datta* v. *Abdul Wahid* (I. L. R., 11 Calc., 55), in which it was said: "The Judicial Committee of the Privy Council has held in *Mangal Prasad Dichit* v. *Girija Kant Lahiri*, that the provisions of Act IX of 1871 do not apply to any suit, or to any application in a suit, instituted before the 1st April 1873, and that an application for the execution of a decree is an application in the suit in which the decree was obtained."

It has, however, been said by Wilson, J., in *Bhibo Sundari Debi* v. *Rakhal Chandra Basu* (I. L. R., 12 Calc., 583), that "it is a general rule in construing statutes that in a matter of substantive right they are not to be so read as to take away vested rights, but that in matters of procedure they are general in their operation." In *Lal Mohan Mukharji* v. *Jogendra Chandra Rai* (I. L. R., 14 Calc., 636), it was held that the provisions of an Act, which create a new right, cannot, in the absence of express legislation or direct implication, have a retrospective effect; and, accordingly, a judgment-debtor's right under sec. 174 of the Bengal Tenancy Act to set aside a sale does not avail, where the sale is held in pursuance of a decree, the execution whereof was applied for before that Act came into operation. This judgment was followed in *Uzir Ali* v. *Ram Kamal Saha* (I. L. R., 15 Calc., 383), which lays down that in similar circumstances sec. 174, Act VIII of 1885, will not avail an auction-purchaser. But these rulings would seem to have no application to cases in which the provisions of sec. 6, Act I of 1868, are applicable, *i.e.*, to cases in which proceedings have actually been commenced under the old law.

The result of these cases would, therefore, seem to be that the word "proceedings" in sec. 6, Act I of 1868, includes all proceedings in a suit from its institution to its final disposal, including appeals and execution-proceedings of every kind; and that, consequently, when a suit has been instituted under the provisions of an Act which is subsequently repealed, all proceedings in that suit must be continued under the provisions of that Act after its repeal, even in matters of mere procedure. In cases in which proceedings have not been

commenced under the old Act, the provisions of the new Act must be followed in matters of procedure as well as in all other respects; but the new Act must not be interpreted as taking away rights which have arisen under the old Act, nor, in the absence of express or implied enactment, as having retrospective effect.

A similar rule would seem to be applicable to proceedings taken for the recording or enhancing of rents in the course of settlement proceedings. Settlement proceedings begun under Reg. VII of 1822, however, may no doubt be continued under Chap. X of this Act; for the settlement of revenue is a distinct proceeding from the recording and settling of rents payable by the tenants.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context—

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás maháls and revenue-free lands not entered in any register.

"Estate" means the interest immediately below the paramount interest, which Government has in the land.

Kharija Taluks.—In Bengal many estates are called *taluks*, though the term *taluk* was originally applied only to tenures subordinate to estates. At the time of the Permanent Settlement, however, the proprietors of certain *taluks* were allowed to pay their revenue direct to Government. These taluks were, therefore, called independent *taluks*,—in the vernacular, *Huzúrí* or *Khárijá* taluks. All such *taluks*, and all similar *taluks* subsequently created, the revenue of which is payable directly to Government, are estates. *Shikmi taluks*, or *taluks* left dependent on the zamindars at the time of the Permanent Settlement, and *Patni taluks*, which have all been created subsequently, are not estates, but tenures in the language of this Act. (See note to sec. 5.)

Land-Revenue Registers.—The Collector's Land-Revenue Registers, A, B, C, and D, prepared under the provisions of the Land-Registration Act, VII of 1876 (B. C.), show, or rather are supposed to show, the different estates (161,485 in number, according to the Board of Revenue's Report on the Land-Revenue Administration for 1887-88) into which the country is sub-divided, with the names and the character and extent of the interest of the proprietors, managers, and mortgagees of estates and revenue-free properties. A is a register of revenue-paying lands; B, of revenue-free lands; C, a mauzawar register of all lands, revenue-paying and revenue-free; and D, an intermediate register of changes.

Government Estates.—The inclusion of Government khás maháls in the definition of estate is noticeable, as it makes quite clear, what indeed follows from the repeal of Act VIII of 1879, B. C., by this Act, namely, that the ordinary rent law of Bengal, as contained in this Act, applies to Government

estates as well as to estates managed by the Court of Wards, and to ordinary estates. The only advantage in regard to questions connected with the assessment and recovery of rent, which Government now claims over ordinary zamindars, is, it was said during the debates on the Tenancy Bill, the Certificate Procedure authorized by Acts VII of 1868, B. C., and VII of 1880, B. C, which is a summary procedure for the recovery of public demands, applicable to Government estates as well as to estates managed by the Court of Wards.

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

Meaning of "Proprietor."—The term "proprietor," as used in this Act, includes Government as well as the owners of revenue-free lands. As the word "person" under sec. 2, cl. 3, Act I of 1868, includes a company, association, or body of individuals, whether incorporated or not, the term "proprietor" will, in this Act, denote any number of proprietors as well as one. The term "proprietor," as far as the Permanent Settlement is concerned, includes zamindars, talukdars, chaudhries, mortgagees, and, in case of dispute, the party in possession. "Proprietor," within the meaning of the Land-Registration Act (VII of 1876, B. C.), includes every person in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof, and every farmer or lessee who holds an estate or revenue-free property directly from or under the Collector.

Effect of non-registration of proprietary interests.—Every proprietor of an estate or revenue-free property, or of any interest therein, being in possession of such estate or revenue-free property at the commencement of Act VII of 1876, B. C.,—every joint proprietor of an estate or revenue-free property, being in charge of such estate or revenue-free property, or any interest therein, on the part of the other proprietors, at the commencement of that Act,—every person succeeding after the commencement of that Act to any proprietary right in an estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise,—every joint proprietor assuming charge on behalf of the other proprietors,—and every person assuming charge of an estate or revenue-free property, or of any interest therein, as manager, after the commencement of that Act, is bound to have his name, and the character and extent of his interest, registered in the Collector's Registers under that Act (sec. 38), within six months from the date of his succession, by purchase, inheritance, gift, or otherwise (sec. 42), and no person is bound to pay him rent (sec. 78), unless and until his name has been so registered. There is evidence to show that proprietors, managers, and mortgagees of proprietary interests and of revenue-free properties have hitherto been very remiss in causing their names and interests to be registered, or mutations (on transfer or succession of properties) to be made in the Collector's Registers. It would be well for landlords to remember that, in suits for arrears of rent, brought by a proprietor, who has failed or neglected to register his name in the Collector's Registers, the suit must be dismissed, if the tenant should set up the plea that the proprietor's name has not been duly registered. It is also to be remembered that, in proceedings under Chap. X of this Act, a Revenue-officer may, under Rule 12 (*d*), Chap. VI of the Rules framed by the Local Government under this Act (see Appendix I), at his discretion, refuse to

recognize as proprietor any person who is bound to have his name registered, unless and until it appears that his name and the character and extent of his interest have been duly registered under the Land-Registration Act. A Revenue-officer making a settlement of rents under Chap. X may, therefore, refuse to entertain an application for enhancement or settlement of fair rents from a proprietor who is not registered.

Meaning of "Lakhirajdar."—The term "*lakhirajdar*," the vernacular expression for "owner of revenue-free land," is commonly applied, it may be mentioned, not only to (*a*) owners of lands held free of Government *revenue*, but also to (*b*) occupants of lands held *rent*-free under the owner of a revenue-paying estate or revenue-free property. The former class of *lakhirajdars*, who are properly so called, are "proprietors" within the meaning of this Act; the latter are tenure-holders, or raiyats, according as they come under the first or second clause of sec. 5. Tenants holding under owners of revenue-free property (class *a*) may be either tenure-holders or raiyats. Tenants holding under holders of *rent*-free land (class *b*) are under-tenure-holders, raiyats or under-raiyats, according as the *lakhirajdar* himself is a tenure-holder or a raiyat. If the *lakhirajdar* is a tenure-holder, his tenants may be either under-tenure-holders or raiyats; but if he is a raiyat within the meaning of sec. 5, sub-sec. 2, his tenants will be under-raiyats, and cannot acquire occupancy-rights, save where under-raiyats acquire such rights by local custom.

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

Meaning of "Land" in this sub-section.—The term "land" has not been defined in this Act. The omission is an intentional one. The Rent Commission in their bill (sec. 3) defined land as follows: "Land includes woods and water thereupon; when applied to land cultivated or held by a raiyat, it means land used or intended to be used for agricultural or horticultural purposes, or the like. In Chap. XVIII" (a chapter relating to procedure in suits for recovery of arrears of rent and certain other suits), "it means (*a*) tenures, under-tenures, and holdings; (*b*) land used or let to be used for agriculture or horticulture, pasture, or other similar purpose, or for dwelling-houses, manufactories, or other similar buildings; and (*c*) rights of pasturage, forest rights, fisheries, and the like. *Explanation.*—*Bastu* or homestead land is land used for agricultural purposes, when it is occupied by a raiyat, and together with the land cultivated by the said raiyat forms a single holding." This definition was, however, not approved, and finds no place in the present Act. Land is defined in Act V (B. C.) of 1867; but as this is not a Bengal Council Act, the definition therein given will not apply to the word "land," when used in this Act. There is, therefore, no legislative enactment by which the term "land" in this sub-section can be interpreted. During the progress of the Tenancy Bill through Council a proposal was made by the Maharaja of Darbhanga to restrict the provisions of the Act to "land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." This proposal was, however, negatived. The absence of any definition of the term "land" in the Act, and the rejection of the Maharaja of Darbhanga's proposal in Council have given rise to the impression that the provisions of the Tenancy

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Act are applicable to all land, whether agricultural or non-agricultural. It is submitted that this view is incorrect for the following reasons: By section 4 of the Act, tenants are divided into the following classes: (*a*) tenure-holders; (*b*) raiyats; and (*c*) under-raiyats. Now, from the definition of "raiyat" given in sec. 5 (2) and from the remarks made by the Hon'ble Mr. Ilbert in introducing the Bill, it is evident that the term raiyat applies only to those tenants who hold land for purposes of agriculture and horticulture, or pasture, or who have come into possession for such purposes.* No doubt the term "tenure-holder" is not restricted to the holders of agricultural land; but tenants of the classes inferior to them must be cultivators, or persons who hold land originally let mainly for purposes of cultivation. It is true that the Rent Commission in their Report (para. 11) observe: "It has never been doubted that the rents of tenures and under-tenures are recoverable under these Acts" (Acts X of 1859 and VIII, B. C., of 1869), "and these commonly include much more than land used for agricultural or horticultural purposes." But, on the other hand, it is to be added that the Maharaja of Darbhanga's proposal was rejected, because it was considered that, "if the amendment were carried," as observed by the Hon'ble Mr. Reynolds, "it would have the effect of excluding from the operation of the Bill not merely all waste lands but all the lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is in my opinion better for the Council to leave the question to be decided by the Courts."† The Hon'ble Sir Steuart Bayley remarked: "The Hon'ble Mr. Reynolds has pointed out that this amendment will have the effect of limiting the raiyat's right of occupancy, as he would thereby lose the rights as to all waste lands and lands not used for agricultural and horticultural purposes. I may point out also that the effect would be to remove from the scope of the Bill, which deals with tenants generally, all such parts of a tenure, as may be used momentarily for other purposes than agriculture or horticulture. It is much safer to trust to the Courts to apply the law to these cases."‡ It will be seen that the Maharaja of Darbhanga's proposal was rejected, not because the Council considered that the provisions of the Act were applicable to all land, but because it was considered that its adoption would exclude from the operation of the rent-law waste land and all land not actually used for cultivation at the time when any dispute on the subject arose. It would seem probable that the Council intended to make no radical change as to the nature of the land to which the provisions of the Rent Law are applicable, but to leave the law in the same state as before. In the North-Western Provinces Rent Act (XII of 1881, recently amended by Act XIV of 1886), it is enacted "that save as provided by sections 171 and 172" (these sections refer to the execution of decrees), "nothing herein contained applies to land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants." There is no such provision in the Bengal Tenancy Act; but it seems most probable that its provisions are of similarly limited application.

Rulings under old Acts as to their application to non-agricultural land.—There was of course no question as to the applicability of the old Acts,

* See Selections from papers relating to the Bengal Tenancy Act, 1885, p. 54.

† See Selections from papers relating to the Bengal Tenancy Act, 1885, p. 482.

‡ See Selections from papers relating to the Bengal Tenancy Act, 1885, p. 482.

as there can be none as to the applicability of the present Act, to agricultural land; but as to non-agricultural land, the rulings under the former Acts are very conflicting. There are some decisions under Acts X of 1859 and VIII of 1869, B. C., which go so far as to say that the rent-law does not apply to such land at all. Thus, in the case of *Kalikrishna Biswas* v. *Janki* (8 W. R., 250), it was said, "that the occupation intended to be protected by sec. 6, Act X of 1859, is occupation of land, the subject of agricultural and horticultural cultivation, and used for purposes incidental thereto, such as for the site of the homestead, the raiyat or *mali's* dwelling-house, and so on, and does not include occupation, the main object of which is the dwelling-house, and when the cultivation of the soil, if any there be, is entirely subordinate to that." Then, in *Mahtab Chand* v. *Mukund Ballabh Basu* (9 B. L. R., App., 13), it was said that the Revenue Courts had no jurisdiction to entertain a suit for rent of land with buildings upon it, when the rent included the rent of the buildings as well as of the land. The cases of *Bipra Das De* v. *Wollen* (1 W. R., 223), *Ramdhan* v. *Haradhan Paramanik* (9 B. L. R., 107, note; 12 W. R., 404), and *In re Bramamayi* (9 B. L. R., 109, note), support this view. In another case, *Hari Mohan Sirkar* v. *Scott Moncrieff* (9 B. L. R., App., 14), it was ruled that a suit for rent of land, where the rent comes from *arhats*, *ghâts* and bazars situated upon it, as well as from the land, will not lie in the Revenue Court. In *Aditya Pal* v. *Kamala Kant Pal* (Marsh., 401), it was held that the rent-law was not applicable to a rent payable for an Indigo factory, which included land, buildings and the *suttas* or contracts by the raiyats for the growth and supply of indigo. Further, in *Khalat Chandra Ghosh* v. *Minto* (1 Ind. Jur., N. S., 426), in which land with extensive mining rights had been let to the plaintiff, the land being necessary and accessory to the enjoyment of the mining rights, and in *Shâlgrâm Sing* v. *Kubiran* (3 B. L. R., A. C., 61), in which the plaintiff sued for the rent of land leased for quarrying purposes, and for a yearly tax, which he had reserved the right of levying on the parties, it was held that Act X of 1859 did not apply. Other decisions, however, do not go so far, and merely lay down that the right of occupancy and the enhancement provisions of Acts X of 1859 and VIII of 1869, B. C., do not apply to land not used for agricultural or horticultural purposes. Thus, in *Mohar Ali Khan* v. *Ram Ratan Sen* (21 W. R., 400), it was held that rights of occupancy cannot be acquired in lands occupied exclusively by buildings; and in *Shamomayi* v. *Blumhardt* (9 W. R., 552), it was decided that Revenue Courts had no jurisdiction in a suit for arrears of rent at an enhanced rate from a tenant, to whom land had been leased for the purpose of building a school-house and a church. In *Kali Mohan Chatarji* v. *Kalikrishna Rai* (11 W. R., 183; 2 B. L. R., App., 39), it was held that Act X of 1859 does not apply to a suit for the enhancement of rent of land, situated in the midst of land used for building purposes; while the cases of *Madan Mohan Biswas* v. *Stalkart* (17 W. R., 441; 9 B. L. R., 97), *Durgasundari Dasi* v. *Umdatunnissa* (18 W. R., 235; 9 B. L. R., 101), *Naimudin Jawardar* v. *Scott-Moncrieff* (3 B. L. R., 283), *Khairudin Ahmad* v. *Abdul Baki* (9 B. L. R., 103, note), *Church* v. *Ramtanu Shaha* (9 B. L. R., 105, note), and *Purna Chandra Rai* v. *Sadut Ali* (2 C. L. R., 31), lay down that lands used for building purposes, and not used for agricultural and horticultural purposes, but situated in a town, are not liable to enhancement of rent. See also *Jai Kishor Chaudhrani* v. *Nabi Baksh*, 17 W. R., 178; *Gokul Chand Chatarji* v. *Mosahru Kandu*, 21 W. R., 5, and *Piari Bewa* v. *Nakur Karmokar*, 19 W. R., 308. This, then, may be regarded as settled law under the former Acts. But an exception to this general rule, if it be now applicable,

is made by clause 4, sec. 167 of this Act, which provides that a purchaser, at a sale under this Act, of a tenure or holding sold on account of arrears of rent due in respect thereof, may, if he has power to avoid all incumbrances, sue to enhance the rent of land, which is the subject of a "protected interest" of the nature specified in cl. (*c*), sec. 160. The "protected interest," specified in cl. (*c*), sec. 160, is "any lease of land, whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made." Other rulings are to the effect that the provisions of Acts X of 1859 and VIII of 1869, B. C., as to the recovery of arrears of rent, apply to the rent of land irrespective of the purpose for which it is used. Thus, in *Gaetri Debi* v. *Thakur Das* (W. R., Sp. No., 1864, Act X, 78) it was held that a suit for arrears of rent of a *hât* was cognizable by a Revenue Court; while in *Watson* v. *Govind Chandra Mazumdar* (W. R., Sp. No., 1864, Act X, 16) it was said that the class of cases made cognizable by a Collector under cl. 4, sec. 23, Act X of 1859, is described in terms wide enough to extend his jurisdiction in suits for rent to cases of tenancies not strictly agricultural, provided the subject of the lease is land, and the rent issues out of the land, and is due on account of, and for the use of, the land, whatever may be the purpose for which the surface of the land is used. (See also the case of *Nasur Ali* v. *Sadat Ali*, W. R., Sp. No., 1864, Act X, 102.) The late Mr. Justice Dwarkanath Mitter maintained this view of the question in the cases of *In re Bramamayi* (9 B. L. R., 109), *Durga Sundari Dasi* v. *Umdatunnissa* (9 B L. R., 101), and *Brajanath Kundu* v. *Lowther* (9 B. L. R., 121); but his opinion was overruled. In several cases it was held that Act X applied, when rent was sought to be recovered merely for the land upon which houses stood, but not for the houses themselves, or when the rent of the land was the more important item. See *Tarini Prasad Ghosh* v. *Bengal Indigo Co.* (2 W. R., Act X, 9), *Matangini Dasi* v. *Haradhan Das* (5 W. R., Act X, 60), *Ram Charn Singh* v. *Meadhan Darji* (8 W. R., 90), *Mathuranath Kundu* v. *Campbell* (9 B. L. R., 115, note), *Brajanath Kundu* v. *Gopinath Shaha* (17 W. R., 183), and *Chandessari* v. *Ghinah Pandi* (24 W. R., 152).

Classes of agricultural land.—Agricultural land, it may be mentioned, is either (*a*) raiyati, to which the provisions of the Act, excepting Chap. XI, are generally applicable, or (*b*) proprietor's private land, that is, *khamar*, *nij-jote*, *sir*, or *zerat* land, to which the provisions of Chap. XI apply. Waste land may be either raiyati or proprietor's private land, but is ordinarily raiyati. In determining whether a particular parcel of land is raiyati or *khamar*, regard must be had to local custom, to the character of the land before this Act came into force, and to other relevant facts, described in sec. 120; but the presumption is that all land is raiyati until the contrary is proved. See sec. 120 (2) and (3).

Origin of tenancy to be considered.—When determining the question as to whether land is agricultural or non-agricultural, the origin of the tenancy should be considered. If land has originally been let for agricultural purposes, the presumption is that it will continue subject to the incidents of agricultural land. Thus, it has recently been held, that a raiyat may, with consent of his landlord, erect buildings on his land, or use part of it for tanks and gardens without losing his right of occupancy in it (*Prasanno Kumar Chatarji* v. *Jaggannath Bysak*, 10 C. L. R., 25). Under the provisions of secs. 76 to 83 of the present Act, a raiyat has every right to erect permanent buildings suitable to the holding, and make

other improvements on his land, even against the wishes of his landlord, without losing any of his rights as an agricultural tenant.

Payment of rent not necessary to constitute or maintain tenancy.—It is to be noticed that, according to this definition of "tenant," it is not necessary either to constitute or maintain a tenancy that rent should actually be paid. It is sufficient if the tenant is liable to pay rent, though he may not pay it, or is exempt from payment under some contract made with his landlord. Thus, the land may be let to him at a pepper-corn rent, or rent-free for a term of years under a reclaiming lease, or he may render service to his landlord in lieu of rent. In all these cases, he is a "tenant," and continues to be so, though he does not pay his rent (*Masyatulla* v. *Nurzahan*, I. L. R., 9 Calc., 808 ; 12 C. L. R., 389), or render the stipulated service (*Chandra Nath Rai* v. *Bhim Sirdar*, W. R., Sp. No., Act X, 37).

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

A raiyat, *thikadar*, *ijaradar*, or any person to whom rent is payable, is a "landlord" under the Act. It may be well to point out that "landlord" has a very different meaning from "proprietor" under this Act. Neither are all proprietors necessarily "landlords," nor are all landlords necessarily proprietors. An owner of an estate or revenue-free property, who cultivates his estate himself, or by hired labour, and has no tenants, is a "proprietor," but not a landlord ; while a raiyat, who collects rent from an under-raiyat, is a "landlord," but not a "proprietor."

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chap. XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

Rent.—The word "lawfully" in this definition implies that there must be a lawful contract, express or implied, between the parties. Whatever is payable or deliverable in money or kind under such circumstances, if for the use and occupation of land, is rent. If there be no contract, or if the action of either of the parties has not been lawful, or if the money or produce be not payable or deliverable for the use of land, then it is not rent. Thus, there is nothing illegal in a contract under a farming lease from the owner of a *hât*, to collect a portion of the proceeds of sale from persons exposing their goods for sale in the *hât* under temporary sheds, or in open places, and such collections are not, in the nature of internal duties, but of rent for the use of land (*Bangsho Dhar Biswas* v. *Madhu Mahaldar*, 21 W. R., 383 ; but see *contra*, *Savi* v. *Issar Chandra Mandal*, 20 W. R., 146). A number of mangoes to be supplied yearly for the use of land is rent (*Nobo Tarini Dasi* v. *Gray*, 11 W. R., 7). But damages for not giving up the land (*Bhuban*

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Mohan Basu v. *Chandra Nath Banarji*, 17 W. R., 69); and compensation for the use and occupation of land (*Krishna Gopal Mawar* v. *Barnes*, I. L. R., 2 Calc., 374), are not rent. So also damages for the wanton destruction of trees, though stipulated for in the *kabulyat* (*Nobo Tarini Dasi* v. *Gray*, 11 W. R., 7), and goats, straw, and other articles, the delivery of which was stipulated for in a separate agreement, entered into simultaneously with the interchange of a *pottah* and *kabulyat* (*Bhubo Sundari Debi* v. *Jynal Abdin*, 8 W. R., 393), are not rent. Money payable by a lessee in consideration of a lease granted, whether called *nazar* or *salami*, cannot be looked upon as rent, but is simply a debt due upon a contract (*Dinonath Mukharji* v. *Debnath Mallik*, 13 W. R., 307). It is important to notice that *dâk* cess is not recoverable as rent; for it is not payable for the use and occupation of land, and is not made recoverable as rent by the Zamindari Dâk Act (VIII, B. C., of 1862). Under sec. 12 of the Act, however, it is lawful for a zamindar to contract with any person holding under him for the payment by him of this cess; but it must be recovered as money due on a contract, and not as rent. Similarly, patwaries' dues (*neg* or *hisábáná*) are not lawfully payable or recoverable as rent, for they are not payable for the use or occupation of land. If payable by the landlord, they can be recovered from him as arrears of public revenue under sec. 36, Reg. XII of 1817; but they cannot be recovered by the landlord from his tenants under the provisions of this Act. Further, rent must be either money or produce. Services rendered for the use or occupation of land are, therefore, not rent, and accordingly service-tenures, even if they had not been specially excluded from the operation of this Act, as they are (sec. 181), cannot be affected by its provisions. The imposition of *abwabs* or *mahtuts* is prohibited by sec. 74, and, not being lawfully payable, they are of course not rent. (See note to sec. 74.) The word "payable" in this definition shows that the term "rent" is not restricted to what is "lawfully recoverable;" so that it would appear that an amount paid by an under-raiyat in excess of the limits laid down by cls. (*a*) and (*b*), sec. 48, may be lawfully payable, and come under the definition of "rent," though it may not be lawfully recoverable under the provisions of that section. A raiyat-landlord, therefore, if this view be correct, when collecting an amount in excess of the amount lawfully recoverable, will not render himself liable to the penalty provided in sec. 75, for the exaction of a sum in excess of the amount of rent lawfully recoverable, provided the amount collected is lawfully payable. Similarly, a proprietor whose name has not been registered under Act VII, B. C., of 1876, or who has not lodged the returns required of him under Act IX, B. C., of 1880, and the transferee of a permanent tenure, who has not given notice to the Collector and paid him the landlord's fee, as required by sec. 166 of this Act, may yet collect rent from their tenants, though unable to recover it from them by suit (see notes to secs. 48 and 75). It is to be further noted that, to be rent, the amount payable or deliverable must be payable or deliverable to the landlord. Hence, a sum of money payable in accordance with an agreement between the tenant and his landlord, not to the landlord himself, but to a third person (for instance, a superior landlord), is not rent, and cannot be recovered as such. It can, however, be recovered as damages (*Ratnessar Biswas* v. *Harish Chandra Basu*, I. L. R., 11 Calc., 221). In another case, in which a zamindar sold a taluk, but stipulated for the annual payment to him of a small sum called *dasturat*, by the purchaser, it was held this annual demand was not rent, as the relation of landlord and tenant did not exist between the parties (*Ram Charn Banarji* v. *Torita Charn Pal*, 18 W. R., 343).

Money recoverable under any enactment for the time being in force as rent.—Sums payable to the proprietors of lands under the Hugli and Burdwan Drainage Act (V of 1871, B. C.), to zamindars and tenure-holders under sec. 38 of the Bengal Survey Act (V of 1875, B. C.), to the holders of estates or tenures under sec. 47 of the Cess Act (IX of 1880, B. C.), and to zamindars or tenure-holders under sec. 74 of the Bengal Embankment Act (II of 1882, B. C.), are recoverable as "rent."

Rent is moveable property.—It has been held that for the purposes of Acts VIII and X of 1859 rent comes within the terms "property" and "moveable property" (*Mohesh Chandra Chatarji* v. *Guru Prasad Rai*, 13 W. R., 401).

(6) "Pay," "payable," and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

See note on the definition of tenure-holder given in sec. 5, cl. 1.

Another definition of "tenure" is given in sec. 1, Act VII of 1868, B. C.

Throughout this Act, the term "tenure" is used in its strict sense of the interest of a tenure-holder; but in the rulings of the High Court under the old law, it is often used as synonymous with "tenancy," and sometimes in the sense of a raiyat's interest. The reader should guard himself against concluding that in these rulings the word "tenure" necessarily applies only to the interest of a tenure-holder as defined in this Act.

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

See note under sec. 10.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

The term "holding" is often popularly used to denote a tenure or under-tenure, and is sometimes confused with "tenancy." But this is incorrect. A "holding" is the interest of a "*raiyat*." Strictly speaking, the interest of an "*under-raiyat*" is not a "holding;" but this would appear to be an inadvertence on the part of the framers of this Act.

Suppose a raiyat was let into occupation of certain plots at a particular time, and was let into occupation of other plots at a subsequent time at the same rate of rent. Do the latter plots form a "separate tenancy," or is the holding one? The answer to this question will depend on the arrangement made by the raiyat with the landlord. Ordinarily, the question of one or two holdings will be a matter of contract, but, contract apart, there would appear to be two separate holdings in the case above supposed.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary,

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or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

Village.—It is to be noted that the village, as above defined, is limited to the area included in a map of the revenue-survey within the same exterior boundary (where such maps have been prepared), though the village boundary may have been altered by decrees of the Civil Courts since the revenue-survey was made, and though the boundary by possession may not be in harmony with the boundary shown on the map. As rights of occupancy under sec. 20 accrue to "settled raiyats" in all lands which they hold in the village, it becomes necessary that the village boundary, for the purpose of ascertaining the "envelope" of the occupancy right, be demarcated according to the revenue-survey maps, and the rules for the demarcation of village boundaries framed by the Local Government under Chap. X of this Act (see Chap. VI, Rule 4, Appendix I) provide that this shall be done. They, however, further provide that when the boundary according to possession is different from the revenue-survey village boundary, the boundary according to possession shall also be shown on the map.

Revenue-survey maps have been prepared for all the territories subject to the Lieutenant-Governor of Bengal, to which the provisions of this Act apply, except the Jungle Mehals of Midnapore and certain hilly tracts in the district of Chittagong. No officer has as yet been appointed by the Local Government to determine village areas in these localities.

(11) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák; where the Faslí or Amlí year prevails, the year commencing on the first day of Asin; and, where any other year prevails for agricultural purposes, that year.

Agricultural year.—The Faslí or Amlí year prevails in all the districts of the Patna Division, in the districts of Bhagulpur and Monghyr, in the Dharampur Pargana in the west of the Purneah district, and in the Godda Subdivision of the Santhal Parganas. The 1st November, 1885, the date of commencement of this Act, corresponded with the 9th Kartick, 1292, according to the Faslí or Amlí year. The Villaiti year prevails in Orissa. It commences each year on a varying date. The 1st November, 1885, corresponded with 18th Kartick, 1293, of the Villaiti year. The Maghi year prevails in the district of Chittagong. It begins, like the Bengali year, on the 1st Bysák; and on the 1st November, 1885, it was the 17th Kartick, 1247, according to the Maghi year. The Bengali year prevails in all other parts of Bengal. On the 1st November, 1885, it was the 17th Kartik, 1292, according to the Bengali year. When the agricultural year is not referred to in the Act, the words "year" and "month" in the Act mean a year and month reckoned according to the British Calendar (cl. 4, sec. 2, Act I of 1868).

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

The Permanent Settlement dates from the 22nd March, 1793. (*Dhanpat Singh* v. *Guman Singh*, W. R., Sp. No., 1864, Act X, 61; *Rajessari Debi* v. *Shibnath Chatarji*, 4 W. R., Act X, 42.)

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

Deputy Collectors and Sub-Deputy Collectors do not come within this definition of "Collector," unless specially empowered by Government to exercise any of the powers of a Collector under this Act. By a notification, dated the 7th October, 1886, published in the *Calcutta Gazette* of the 13th October, 1886, all officers in charge of sub-divisions were under the provisions of this sub-section vested with the powers of a Collector for the purpose of discharging the functions referred to in sections 12, 13, and 15 of the Act. By a notification, dated the 21st April, 1886, all officers in charge of sub-divisions were vested with the powers of a Collector for the purpose of discharging the functions referred to in sections 69 to 71 of the Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

The Board of Revenue in a letter, No. 883, dated the 4th August 1886, addressed to the Commissioner of Patna, have said that the Collector has *ex-officio* the powers of a Revenue-officer under the provisions of this Act. In the Board's Settlement rules, it is pointed out that "under sec. 3 (17) of the Tenancy Act, officers cannot be vested with the general powers of a Revenue-officer, but with certain functions only as specified in certain provisions of the Act." (Bd.'s Settlement Manual, Ch. I, rule 14, p. 5.)

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(18) "Registered" means registered under any Act for the time being in force for the restriction of documents.

Documents relating to the relations of landlord and tenant may be divided into the following classes: (1) deeds of sale or transfer of the interest of the landlord or tenant; (2) leases; (3) contracts of enhancement of rent; and (4) documents creating incumbrances on tenures and holdings.

Registration of Deeds of sale or transfer.—Deeds of sale or transfer of rights in or of tangible immoveable property of the value of one hundred rupees and upwards must be registered. (Sec. 17, Act III of 1877, and sec. 54, Act IV of 1882.) Formerly, the registration of deeds of sale and transfer of such rights in or of such property of value less than one hundred rupees was optional (sec. 18, Act III of 1877); but since the passing of Act IV of 1882, such sales or transfers cannot be made by unregistered deed, but only by registered instrument or by delivery of the property. (*Narain Chandra Chakrabarti* v. *Dataram Rai*, I. L. R., 8 Calc., 597.) All registered non-testamentary deeds relating to moveable or immoveable property take effect against oral agreements or declarations relating to the same property, unless accompanied or followed by delivery of possession (sec. 48, Act III of 1877), and all registered non-testamentary instruments creating rights of the value of one hundred rupees and upwards in immoveable property, take effect as regards the property comprised therein as against all unregistered instruments relating to the same property, not being decrees or orders (sec. 50, Act III of 1877). Previous to the passing of Act IV of 1882, there was considerable controversy as to the effect of sec. 50, Act III of 1877, and as to whether priority should be given to registered over unregistered deeds relating to immoveable property, when the latter were accompanied by possession. The result of the High Court rulings, however, was that in the absence of fraud or other circumstances, which would in equity protect the unregistered purchaser, the title of the registered purchaser would prevail. (*Fazludin* v. *Fakir Mahomed*, I. L. R., 5 Calc., 336 4 C. L. R, 257.) But if the subsequent registered purchaser took with notice of the prior unregistered purchase, the title of the prior unregistered purchaser would prevail. (*Nemai Charn Dhabal* v. *Kokil Bag*, I. L. R., 6 Calc., 534; *Dinonath Ghosh* v. *Aulak Mani Debi*, I. L. R., 7 Calc., 753; *Narain Chandra Chakrabarti* v. *Dataram Rai*, I. L. R., 8 Calc., 597; *Chandra Nath Rai* v. *Bhairab Chandra Sarmah*, I. L. R., 10 Calc., 250; *Bama Sundari Dasi* v. *Krishna Chandra Dhar*, I. L. R., 10 Calc., 424; *Nani Bibi* v. *Hafizullah*, I. L. R., 10 Calc., 1073; *Bhalu Rai* v. *Jakhu Rai*, 11 Calc., 667; *Solano* v. *Ram Lal*, 7 C. L. R., 481; *Abul Hossain* v. *Raghunath Saha*, I. L. R., 13 Calc., 70). Since the passing of Act IV of 1882, no conflict between registered and unregistered deeds of sale of tangible immoveable property can arise, as there can be no unregistered deeds for the sale of such property of less value than rupees one hundred. All deeds for the sale of such property, whether of the value of rupees one hundred and upwards, or under, must be registered. The above provisions of law are, however, subject to the provisions of secs. 12 to 18 of this Act. Sections 12 to 17 make the registration of deeds of transfer of permanent tenures by sale, gift or mortgage compulsory. Under the old law, dependent talukdars and other persons possessing a permanent transferable interest in land, intermediate between the proprietor and the cultivator, were bound to register in the sherista of the zamindar, or superior tenant to whom rents were payable, all transfers of such taluks, but were not bound to register before a registering officer. The changes made in this respect are described in detail in

the notes to secs. 12 to 17. Section 18 makes the same rule applicable with regard to the transfer of the holdings of raiyats holding at fixed rates. Hence, oral agreements or declarations relating to the transfer of permanent tenures or raiyati holdings at fixed rates are of no effect, even if accompanied or followed by possession. However, the provisions of sec. 48, Act III of 1877, will be applicable to ordinary raiyati holdings, which, when transferable, may be validly transferred by delivery of possession. But all deeds of sale of such interests, whatever may be their value, must under sec. 54, Act IV of 1882, be registered.

Meaning of "lease" in this Act.—The term "lease" is not defined in the present Act. In sec. 3, Act III of 1877, it is defined as including "a counterpart, kabúliyat, an undertaking to cultivate or occupy, and an agreement to lease." In sec. 3, cl. 12, Act I of 1879, it is defined as meaning "a lease of immoveable property," and as including "(*a*) a pattá, (*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or deliver or pay rent for immoveable property, (*c*) any instrument by which tolls of any description are let, and (*d*) any writing on an application for a lease intending to signify that the application is granted." These definitions are, however, too wide for the purposes of this Act. Perhaps, the best definition of the term is that given in Field's Digest, p. 3, where it is defined as meaning "a contract creating or continuing the relation of landlord and tenant, and executed by the landlord in favour of the tenant." It is to be observed that, in this Act, the word "lease" is sometimes used alone, and sometimes the words "written lease" are used. In all these cases, "lease" would appear to mean a written lease, and not to include a parol contract of letting, though there is room for doubt on this point.

Cultivators' leases exempt from stamp-duty.—Art. 13, Sched. II, Act I of 1879, exempts from stamp-duty a lease executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed, and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees (see *In re Bhavân Bádhar*, I. L. R., 6 Bom., 691), and the counterpart of a lease granted to a cultivator. By the term "cultivator" is meant only those persons, who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants or by hired labour, and with their own or hired stock, and not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease (I. L. R., 5 All., 360).

Registration of agricultural leases, when compulsory.—Under cl. (*d*), sec. 17, Act III of 1877 (The Indian Registration Act), the "registration of leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent," is compulsory. There is no exemption in favour of agricultural leases; so that all agricultural leases for a term above one year, however small the value of the property leased, must be registered. (*Omar* v. *Abdul Gaffur*, 9 W. R., 425.) When the form of a pottah is expressed by the words *sanbasan* (or year by year), a year-by-year tenancy is meant, and such a pottah is a lease for a term exceeding one year, and must therefore be registered. (*Ram Kumar Mandal* v. *Brajakari Mirdha*, 2 B. L. R., A. C., 75; 10 W. R., 410). A lease for more than a year is not the less a lease, because a condition is attached to the consideration, and because its terms may be lessened on the payment of a sum of money by the lessor. Such a lease must be registered. (*Baksh Ali Bhumya* v. *Nobotara*, 13 W. R., 468.) But, under the proviso to clause (*d*), sec. 17, the

Local Government may exempt leases in any particular district for a term of less than five years, and of a rental of less than Rs. 50, from compulsory registration. Under this proviso, the Local Government exempted leases in the districts of Gya and Shahabad, if for a term of two years only, from compulsory registration (see Notification in the *Calcutta Gazette* of Aug. 15th, 1866), but this notification has now been cancelled (see Notification of May 17th, 1886.) Under this section it has been held that, when a *kabuliyat* for one year contains a provision extending its term to more than a year, its registration is indispensable (*Krishna Kali Munshi* v. *Agemoni Bewa*, 15 W. R., 170), and a lease, which is to remain in force until another is granted, must be registered. (*Venkatachellam Chetti* v. *Audian*, I. L. R., 3 Mad., 358.) A proposal to lease, if accepted, and if the proposal and acceptance constitute a contract in writing, must also be registered. (*Safdar Reza* v. *Amzad Ali*, I. L. R., 7 Calc., 703; 10 C. L. R., 121; *Lal Jha* v. *Negru*, I. L. R., 7 Calc., 717.) On the other hand, a lease for one year certain, containing an expression on the tenant's part of readiness to hold the land longer at the same rent, if the landlord should desire it, has been held not to be a lease for a term exceeding one year, and therefore need not be registered. (*Apu Badgavda* v. *Narhari Annaji*, I. L. R., 3 Bom., 21.) See also *Jagdish Chandra Biswas* v. *Abedullah Mandal* (14 W. R., 68), and *Southo Prasad Das* v. *Param Padhan* (26 W. R., 98). Registration is also not required in the case of an *amaldastak*, executed for the purpose of giving possession, pending the execution of the formal instrument (*Banwari Lal* v. *Sangam Lal*, 7 W. R., 280); of a *daul*, and of an *amaldari*, which are mere preliminaries to a lease (*Golak Kishor Acharji* v. *Nanda Mohan De*, 12 W. R., 394; *Lachmessar Singh* v. *Dukho*, I. L. R., 7 Calc., 708; 10 C. L. R., 127); of a *daul jihrist*, which is merely a memorandum by a zamindar's agent of the rates of rent agreed upon, and to which the tenants affix their signatures in token of such agreement (*Ganga Prasad* v. *Gogan Singh*, I. L. R., 3 Calc., 322; *Kartik Pandi* v. *Khakan Singh*, 1 C. L. R., 328), and of a *daul darkhast*, or petition asking for a lease (*Chuni Mandar* v. *Chandi Lal Das*, 14 W. R., 178; *Meherunnissa* v. *Abdul Ghani*, 17 W. R., 509; *Safdar Reza* v. *Amzad Ali*, I. L. R., 7 Calc., 703; *Lal Jha* v. *Negru*, I. L. R., 7 Calc., 717). Further, an entry in a book of the lessor and signed by the lessee, which shows the extent of the holding and the rent payable in respect of it, is not a lease, or an agreement to lease, but an admission, and need not be registered. (*Narain Kumari* v. *Ram Krishna Das*, I. L. R., 5 Calc., 864.)

Registration of agricultural leases, when optional.—Under cl. (*c*), sec. 18 of Act III of 1877, the registration of leases of immoveable property for any term not exceeding one year, and leases exempted by the Local Government from registration, is optional. The provisions of sec. 54, Act IV of 1882, do not apply to leases of immoveable property; so that leases of land of less value than one hundred rupees, if committed to writing, need not be registered, if for a term not exceeding one year. Parol contracts of letting, if accompanied or followed by possession, will, of course, under sec. 48, Act III of 1877 be valid, even against subsequent registered leases, and under sec. 50 of the same Act registered leases will prevail against unregistered documents of the same class, even when accompanied by possession, subject, however, no doubt to the rule laid down in the High Court decisions quoted above, that the subsequent lessee under the registered lease has not taken with notice of the previous unregistered lease.

Registration of under-raiyats' leases.—A lease executed by a raiyat landlord in favour of an under-raiyat must be registered, if the rent payable by the

under-raiyat exceeds that paid by the raiyat-landlord by more than 25 per cent. (sec. 48). Further, a lease executed by a raiyat in favour of an under-raiyat is not valid against the landlord of the raiyat, without that landlord's consent, unless it be registered ; and no such lease can be admitted to registration, if it purports to create a term exceeding nine years. Finally, a registered sub-lease executed without the consent of the landlord of the raiyat before the commencement of the Tenancy Act is not valid for more than nine years from the commencement of the Act (sec. 85).

Unregistered leases, the registration of which is compulsory, cannot be received in evidence.—Under sec. 49, Act III of 1877, no document, the registration of which is compulsory, can be received in evidence, unless it has been duly registered, and, in this case, under sec. 91 of the Evidence Act no secondary evidence of its contents is admissible. (*Manmohini Dasi* v. *Bishnu Mayi Dasi*, 7 W. R., 112 ; *Omar* v. *Abdul Gaffur*, 9 W. R., 425 ; *Rahmatullah* v. *Shariatullah Kagchi*, 1 B. L. R., F. B., 58 ; 10 W. R., F. B., 51 ; *Ram Kumar Mandal* v. *Brajahari Mirdha*, 2 B. L. R., A. C., 75 ; 10 W. R., 410 ; *Kabulan* v. *Shamsher Ali*, 11 W. R., 16 ; *Dino Nath Mukharji* v. *Deb Nath Mallik*, 13 W. R., 307 ; *Crowdie* v. *Kullar Chaudhri*, 21 W. R., 307.) But where the contract between the parties to a rent suit is in no way disputed or denied, and the fact of certain lands having been taken at a certain rent is admitted, the only issue being whether the rent has been paid or not, the case may be tried, notwithstanding that the kabuliyat is inadmissible by reason of non-registration. (*Dino Nath Mukharji* v. *Deb Nath Mallik*, 14 W. R., 429 ; see also *Reza Khan* v. *Bhikan Khan*, 7 W. R., 334.) The plea as to the inadmissibility of evidence for want of registration must be taken in the Court below ; otherwise it cannot be allowed in special appeal. (*Currie* v. *Chatty*, 11 W. R., 520 ; *Grish Chandra Rai* v. *Amina Khatun*, 3 B. L. R., App., 125.)

Registration of contracts for enhancement of rent.—Contracts for the enhancement of the rent of both occupancy and non-occupancy-raiyats must, under the provisions of secs. 29 and 43 of this Act, be registered ; but this will not prevent a landlord from recovering rent at the rate at which it has been actually paid for a period of not less than three years immediately preceding the period for which the rent is claimed.

Registration of incumbrances on tenures and holdings.—The term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest, created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a "protected interest," as defined in sec. 160 of this Act (see sec. 161). Chap. XIV, which deals with the subject of sales for arrears of rent, provides that tenures and holdings sold for arrears shall first be sold subject to all registered and notified incumbrances (sec. 164), and if the bidding does not reach a sum sufficient to liquidate the decretal amount, the tenure or holding can then be sold with power to avoid all incumbrances (sec. 165). Under sec. 175 a document, creating an incumbrance and executed before the commencement of this Act, and not required to be registered under sec. 17 of the Registration Act, must be admitted to registration, if presented within a year of the commencement of this Act, and notwithstanding anything contained in Part IV of the Registration Act, which prescribes four months from the date of execution as the time within which documents must be presented for registration. Under sec. 176, the registering officer is bound to notify the incumbrance to the landlord.

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Documents, except sub-leases, even if invalid, must be registered.—It would appear that a registering officer cannot refuse to admit to registration a contract made between a landlord and a tenant, purporting to bar in perpetuity the acquisition of an occupancy-right, or contravening in any other way the provisions of sec. 178 of the Act, though such contract would be illegal and invalid. The illegality or immorality of a contract is no ground for refusing to admit it to registration. A sub-lease for a term of more than nine years cannot, however, under sec. 85 (2), be admitted to registration; and it is a curious fact that this is apparently the only instance in which registration may be refused on the ground of the illegality, immorality or invalidity, of the document.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats ;

and the following classes of raiyats, (namely) :—

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity, or at a rate of rent fixed in perpetuity,

(*b*) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

It is to be observed that occupancy rights, whether transferable or non-transferable, are distinctly excluded from the category of tenures. The ruling of the High Court in the case of *Krishtendra Rai* v. *Aina Bewa* (I. L. R., 8 Calc., 675; 10 C. L. R., 399), that the interest of any raiyat who has a transferable jote is an "under-tenure," is accordingly set aside by the provisions of this section.

Meaning of "tenure-holder" and "raiyat."

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the

successors in interest of persons who have acquired such a right.

Definition of "tenure-holder."—The definition of tenure-holder, given in this section, is not an exhaustive one. It has been found impossible, the Rent Commission Report says (see paragraph 20, p. 10), "to discover any principle of distinction between raiyats and tenure-holders, or under-tenure-holders, which will hold good universally, or even in a large majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure, (or under-tenure), or a raiyati holding, a *talukdar*, tenure-holder, or under-tenure-holder may cultivate land forming part of his *taluk*, tenure, or under-tenure, while the person commonly called a raiyat may have sublet his entire holding, and may not himself cultivate a single square foot. It is impossible, therefore, to say that, under all circumstances, the person who cultivates is a raiyat, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find raiyats also sub-letting and receiving rents from their tenants in actual occupation. If hereditability be tried, the raiyat's interest, the raiyat's holding is heritable as well as the *taluk*. Is transferability the test? The raiyat's *jama*, independently of Acts X of 1859, and VIII of 1869, is commonly transferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord, of his own option, brings raiyats' holdings to sale in execution of decrees for rent; while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title-deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then, in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees; while in other districts the rent of many *taluks* is but a few rupees." As the law stood before the commencement of this Act, the decision of the question whether a particular individual was a tenure-holder or a raiyat, was entirely dependent on the discretion and judgment of the individual officer who had to decide it; and as each individual was a law to himself, it was impossible to forecast the decision in any particular case. The definition of "tenure" in this Act, if not complete, at least affords some indication of the principle on which the Courts should proceed. The principle of the definition is the same as that of the High Court decision in the case of *Durga Prasanno Ghosh* v. *Kali Das Datta* (9 C. L. R., 449), in which it is said, "the only test of a raiyat's interest is to see in what condition the land was when the tenancy was created. If raiyats were already in possession of the land when the interest was created, and the interest was a right, not to the actual physical possession of the land, but to collect the rents from the raiyats, the interest is not raiyati" (in other words, it is a tenure). "If, on the other hand, the land was jungle, or uncultivated, or unoccupied, and the tenant was let into physical possession of the land, the interest would be raiyati, and the nature of that interest would not be altered by the fact of the tenant subsequently sub-letting to under-tenants." (See also *Ram Mangal Ghosh* v. *Lakhi Narain Shaha*, 1 W. R., 71; *Karu Lal Thakur* v. *Lachmipat Dugar*, 7 W. R., 15; *and Kali Charn Singh* v. *Amirudin*, 9 W. R., 579.) Further assistance is given to the Courts in the task of distinguishing between a tenure-holder and a raiyat by the provisions of sub-sec. 5 of this section, which prescribe that when a tenant holds more than a hundred bighas of land, he shall be presumed to be a tenure-holder, and not a raiyat; but there is no corresponding presumption as

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to the status of a tenant holding less than one hundred bighas of land, who may consequently be either a tenure-holder, under-tenure-holder, or raiyat. The following illustrations, taken from the Rent Commission's Draft Bill, sec. 3, will further elucidate the question of what is a tenure-holder.

Illustrations.

(*a.*) "A *patni* interest is a tenure."

(*b.*) "An *ijarah*, or farm for a term of years, is a tenure."

(*c.*) "A holds 120 bighas of valid revenue-free land, situate within the limits of B's revenue-paying estate, and not included under any entry in the General Register of Revenue-free lands, maintained by the Collector of the district, under the law for the time being in force. This land is in the actual possession of raiyats, who pay their rents to A. The interest of A in such land is a tenure."

(*d.*) "B, the proprietor of a revenue-paying estate, makes a rent-free grant to A of 50 bighas of land, included in such estate, and in the actual possession of raiyats. A by virtue of such grant, becomes entitled to the rents payable by these raiyats. A's interest in these 50 bighas is a tenure."

The third of these illustrations applies to the case of a *lakhirajdar*, who holds revenue-free land. The fourth applies to a *lakhirajdar*, who is the holder of rent-free land. The land mentioned in illustration (*c*) is, under this Act, an estate; and the *lakhirajdar*, a proprietor. The *lakhirajdar*, mentioned in illustration (*d*) is, in the case supposed, a tenure-holder; but if the land were in his own actual occupation, he would be a raiyat.

Right to hold land for the purpose of collecting rents.—The words "for the purpose of collecting rents" in this definition of the term "tenure-holder" no doubt give room for the contention that the land referred to in this sub-section is not necessarily agricultural or horticultural land. As has already been pointed out, the Rent Commission in their Report (paragraph 11, p. 9), observed, "it has never been doubted that the rents of tenures and under-tenures are recoverable under these Acts" (X of 1859 and VIII, B. C., of 1869), "and these commonly include much more than land used for agricultural or horticultural purposes." But the fact that the tenants of a tenure-holder must be either raiyats, or under-raiyats, that is, tenants who have taken land, at least in the first instance, for the purpose of cultivating it, shows that the land, which can form the subject of a tenure, to which the provisions of this Act will apply, must be land, wholly or mainly agricultural or horticultural, including of course waste land, fit for purposes of agriculture, horticulture, pasture, forestry, or purposes akin thereto.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

Definition of raiyat—The definition of "raiyat" here given is in accordance with the High Court rulings under the old law in the cases of *Dhanpat Singh* v. *Guman Singh*, (W. R., Sp. No., Act X., 61); *Ram Mangal Ghosh* v. *Lakhi Narain Saha* (1 W. R., 71); and *Kali Charn Singh* v. *Amiruddin*, (9 W. R., 579). In *Dhanpat Singh* v. *Guman Sing*, it was said: "It is very difficult to lay down any general interpretation of the word "ryots." As a general rule, they are the cultivating tenants, but they may not be cultivators at all themselves: they may cultivate their land by hired labour, or by under-tenants." In *Ram Mangal Ghosh* v. *Lakhi Narain Saha* "raiyat," was defined as "one who held land under cultivation by himself or others, who took" (*quære*, work) "for him under his supervision as a superior cultivator," and in *Kali Charn Singh* v. *Amiruddin*, it was explained that "the benefits of sec. 6, Act X of 1859 are not restricted to those who with their own hands till the soil, but extend to those who are *bonâ fide* actually cultivators in the sense that they derive the profit from the produce directly." The definition of raiyat given in this sub-section is not an exhaustive one. It is to be noted that it is not necessary that a raiyat should either be an actual cultivator, or that his land should actually be under cultivation. It is sufficient if he has a right to cultivate it. Thus, in *Uma Charn Datta* v. *Uma Tara Debi* (8 W. R., 181), in which case the defendant had taken a pottah to clear and cultivate a *chak*, or large area of land in the *sundarbans*, at a progressive rate of rent it was said that, "if he cleared some of the land not by his own labour, but by settling raiyats under him on the said *chak*, this does not alter the original character of his holding." Again, in *Khajurunnissa Begam* v. *Ahmed Reza*, (11 W. R., 88), it has been said that "a raiyat does not become a middle-man, simply because, instead of cultivating the land, he erects shops on it, and receives profits from the shop-keepers." These rulings, though under Act X of 1859, are in complete accordance with the provisions of this sub-section.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

Clause (a).—This clause must be read in connection with sec. 183, which lays down that "nothing in this Act shall affect any custom, usage, or customary right not inconsistent with, or not expressly, or by necessary implication, modified or abolished by, its provisions. On this subject, see note to sec. 183.

Clause (b).—Clause (*b*) is of much importance in connection with cases in which the tenant has erected buildings on the land. It has been repeatedly held by the High Court that, when a tenant has taken land for agricultural purposes, and has erected buildings on it, he still continues a "raiyat." See *Khajurunnissa Begam* v. *Ahmad Reza* (11 W. R., 88); *Lal Sahu* v. *Deo Narain Singh* (I. L. R., 3 Calc., 781*; 2 C. L. R., 294); *Prasanno Kumar Chatarji* v. *Jagannath Baisak* (10 C. L. R., 25); *Prasanno Kumari Debi* v. *Ratan Baipari* (I. L. R., 3 Calc., 696).

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On the other hand, where it appears that the land was originally let for building purposes, or that the tenant has, with his landlord's consent, erected houses on it, and resided there for a long time, it has been held that a Court will be justified in presuming that the grant was of a permanent nature. The tenant is then not a "raiyat," and the rent law will probably not be applicable to the land. (*Prasanno Kumar Chatarji* v. *Jagannath Baisak*, 10 C. L. R., 25; *Gangadhar Shikdar* v. *Ayimuddin Shah Biswas*, I. L. R, 8 Calc., 960; 11 C. L. R., 281.)

(5) Where the area held by a tenant exceeds one hundred standard bíghás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

The presumption raised by this sub-section is, of course, a rebuttable one; and although the tenant, who holds more than one hundred bighas, shall be presumed to be a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, there is no such presumption as to the tenant who holds one hundred bighas or less. He may be a tenure-holder, or raiyat, as he and his landlord wish and agree at the time of commencement of the tenancy, or subsequently, accordingly as he comes under the definition of tenure-holder or raiyat, as given in this Act.

Can a tenant belong to more than one class?—It has been asked with reference to the provisions of this chapter, "must a tenant belong to only one of the classes of tenants mentioned in sec. 4, or can he belong to more than one of them?" The answer would seem to be that, in respect to the same tenure or holding, a tenant cannot belong to more than one of these classes of tenants, but there is nothing to prevent his belonging to more than one of them in respect to different tenures or holdings.

Interests in land in Bengal.—Jagirs, Altamgha, and Madadmash grants, Kharija Taluks, and Mukaddami interests.—It is almost impossible to give an accurate and exhaustive list of the different kinds of tenancies prevalent in the Lower Provinces of Bengal, but it may be useful to note here some of the principal ones, to explain their nature and the designations by which they are known, and to distinguish, as far as possible, to which class, whether to the class of tenures, or to that of holdings, they properly belong. Before doing so, however, it may be as well to point out that there are certain so-called tenures prevalent in Bengal, such as *Jagirs*, *Altamgha*, *Madadmash*, and *Ghatwali* tenures, which do not properly come within the category of tenures as defined in this Act. Thus, *jagirs* (from *ja*, a place, and *gir*, taking or occupying) are assignments of the public revenue, made by the Mohammedan Government. They are, therefore, "estates," and *jagirdars* are "proprietors." They were originally life-grants only, but have now become estates of inheritance. It has been held that the Courts can entertain suits for the possession of the land of such grants. (*Forester* v. *The Secretary of State*, 12 B. L. R., 120.) Certain grants of land made *rent-free* by zamindars are also called *jagirs*. Such lands are tenures, and not estates. Similarly, *Altamgha* grants (from *al*, red, and *tamgha*, a stamp) are grants made by the former native rulers of India, of revenue-free land, and they also are estates. They are grants in perpetuity not resumable by the zamindar, (*Unide Rajaha Raje Bommarauze* v. *Pemmasamy Venkatradry Naidu*, 7 Moo. I. A., 128); though the terms *Altamgha* or *Altamgha Enam* in a royal grant do not of themselves

convey an absolute proprietary right to the grantee (*Jewan Das Sahu* v. *Shah Kabirudin*, 2 Moo. I. A., 390). *Madadmash* grants (from *madad*, assistance, and *mash*, livelihood) are also assignments of revenue by the Government for the support of learned and religious Mohammedans, or of benevolent institutions. (*Kaniz Fatima* v. *Sahiba Jan*, 8 W. R., 313.) They are, therefore, not tenures, but estates according to this Act. Many taluks are also estates, and not tenures, as the term would seem to imply; for the term *taluk* comes from the Arabic word, *alak*, to depend upon. A taluk, therefore, originally meant in Bengal an interest subordinate to that of a zamindar. But at the time of the Permanent Settlement some taluks were made independent of the zamindars, and their revenue was made payable directly to the Government. Such taluks, and all similar taluks subsequently created, are known as *Kharija* or *Huzuri* taluks, as distinguished from *Shikmi* or *Mazkuri* taluks, the rent of which continued payable to the zamindar. Certain interests in land to which the designation of *Mukaddami* (from *Mukaddam*, the headman of a village) is applied, are also "estates." "In Cuttack," it is said by Wilson, "the *Mukaddams* are divided into two classes, the *Mazkuri Mukaddams*, who pay revenue direct to Government, the term *Mazkuri* having here the reverse of its usual meaning, and the *Zati* or *Jati Mukaddams*, who pay through an intermediate revenue-payer, or *Malguzar*." (Wilson's Glossary, p. 351.) *Mukaddami* interests are to be met with in the Bhaghalpore district as well as in Cuttack. The *ghatwali* lands in pergunnahs Singhal and Deoghar, in the district of Bhirbhum, the revenue of which is payable directly to Government under the provisions of Reg. XXIX of 1814, would also seem to be "estates" in the language of this Act.

Tenures.—Turning now to tenures properly so called, they may be divided into two classes, viz., (1) rent-free, and (2) rent-paying tenures. *Brahmatter*, *debatter*, and *piratter* lands granted by proprietors rent-free are examples of the first class. Of the second, taluks are the most common instances. As previously explained, besides independent or *Kharija* and *Huzuri* taluks, certain other taluks were at the time of the Permanent Settlement left dependent on the zamindars. These are *Shikmi taluks* (from *Shikm*, the belly). They are also called *Mazkuri*, or specified taluks, because they were specified in the zamindars' engagements with Government. They are also known as *Shamili* or *Muffassal* taluks (from *Shamil*, extending to, or including, and *mufassal*, separate or distinct). Such taluks "are heritable and transferable, but not necessarily held at a fixed rate, which cannot be raised, unless there is a special stipulation to this effect" (Field's Land-holding, p. 705). Other taluks are known as patni taluks (from *pattan*, letting to, or settling). They originated in the estates of the Maharaja of Burdwan, and are dealt with in Reg. VIII of 1819, which describes them as taluks granted by the zamindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. These tenures are not only heritable, but capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts and subject to the process of the Courts of Judicature in the same manner as other real property. They can be sold summarily twice a year on application to the Collector, if the rent is not paid; and if the proceeds of the sale do not cover the arrears, the remaining property of the defaulter is answerable for the balance. Another class of taluks is peculiar to the Chittagong district. "The talukdars of Chittagong," Mr. Cotton says, "enjoy a title based on original reclamation of the soil. The taluk is the unit of the Chittagong revenue administration: its possession still

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implies a proprietary interest. A taluk is transferable and heritable. A taluk carries with it,* the right of fixity of tenure, fair rent, and free sale. The entire cultivated area of Chittagong is, roughly speaking, divided among the holders of these taluks, most of whom cultivate personally. The account given of this district by the Collector, Mr. Fryer, on the 25th August 1794, the year after the Permanent Settlement, is equally applicable at the present day. He writes: 'The minute sub-division of the landed property of this province has given existence to a body of land-holders unknown elsewhere. Though nominally mere tenants of a larger estate, they, in fact, feel themselves confirmed by custom and a series of precedents of the adawlat as the actual proprietors of the soil of even the smallest portion into which land can be divided. Secure in their possessions, independent of, and unconnected with, each other, each individual family forms an independent household in the neighbourhood of its little hereditary estate, and supports itself on the surplus produce of its cultivation.'" "The average size of a taluk," Mr. Cotton goes on to say, "is not more than five or six acres; but where the holding is of any size, or where a person owns more than one, a portion only is reserved as *nij-jote*, and the rest is leased to itmamdars, or cultivators. An itmam † is, like the taluk, *Kaimi*, and carries with it fixity of tenure and of rent. The itmamdar is also generally a cultivator, but he enjoys the same power as the *talukdar* of granting permanent leases to under-tenants; hence, the creation of *dar-itmams* and *kaimi* raiyati leases. According to the practice of the district, these permanent holdings are brought by the terms of their leases under the patni procedure, and are saleable for arrears of rent under Reg. VIII of 1819." (Government of Bengal Report, 1884, Vol. II, p. 213.) The taluks and other tenures of Chittagong have been described by Mr. E. E. Lowis, late Commissioner of that division, in connection with the settlements of the Government estate called Noabad, in that district, as follows: "We have first the *tarafdars*, who were originally collectors of revenue on the part of Government, and representatives of the vast number of small proprietary interests, scattered over the country. These estates were not grouped into compact and convenient circles, but the original clearers of waste land seem to have elected their own representative. The Permanent Settlement was concluded with these revenue collectors, and hence, the estates on the rent-roll are of a very scattered description, and form to this day mere aggregate of taluks, some of new creation, but a great many of them dating from a period anterior not only to the Decennial Settlement but even to our occupation of the country. Under the *tarafs*, we have the taluk, which originally conveyed a distinct proprietary title, the land being held in virtue of original reclamation from jungle, subject to a fixed rate, which it was the intention of the framers of the Permanent Settlement should remain fixed, and not subject to enhancement. The holding also carried with it certain rights and privileges, which have been in many cases lost and allowed to lapse; but, shorn though it is of much of its former value, the *taluk* continues to be a valued holding, and does still carry with it distinct proprietary rights, such as the right to grant permanent leases; while in popular estimation, the talukdar is still the zamindar. Under the taluk again, come *itmams*, *dar-itmams* and *kaimi* raiyati leases; while there are some holdings,

* This must be understood as applying only to the taluks of Chittagong.

† The word *Itmam* or *Etmam* is a corruption of *Ihtimam*, an Arabic word, meaning "trust." It is applied in early financial reports to the large zamindaries of Burdwan, Rajshahye, and Tipperah.

which originally only unprivileged ones, have come to be fixed and permanent. All of the above, with the exception of the *tarafdar*, do sometimes cultivate; and below them again is the actual tiller of the soil, who holds on what is practically a yearly engagement, and whose rate of rent is subject to variation, up or down, according to the state of the rice market and the demand for land." (See Commissioner of Chittagong's No. 72 ct., dated 8th December 1882, to the Secretary to Board of Revenue, paragraph 46.) As regards the Noabad talukdars, Mr. Lowis observes that "they base their claims on exactly the same grounds as do other talukdars, viz., original reclamation of the soil. The term 'Noabad' signifies new cultivation, and it was one well understood under Mahommedan rule, the increase of revenue due to new lands being a recognised item in the accounts under the head of 'ezafa'" (see paragraph 48 of the same letter). "Since 1841, however," he adds, "it was practically held that the Noabad talukdars had no rights, except the right of settlement at any rate of rent the Government may choose to impose." The Board of Revenue did not, however, accept the Commissioner's views of the status of the Noabad talukdars, as above stated, and after full and careful scrutiny of all the documents bearing on the subject, they held that the incidents of a Noabad taluk, as now recognised, differ from those of a full proprietary or zamindari right in temporarily settled estates in many important respects. "In common with such estates," they remarked, "the Noabad talukdar's right is recognized as being heritable, transferable and divisible; the revenue demand is liable to be settled periodically at such an amount as the Government shall think fit; at a re-settlement the revenue officers are bound, under the existing laws, to record the amount of rent demandable from each raiyat, and the amount so recorded, unless altered by the Civil Court, is binding both on the raiyat and his landlord for ten (now fifteen) years. At each renewal of settlement, the talukdar is entitled to an offer of re-settlement on the amount of revenue assessed by Government. The following are the principal points in which the tenure falls short of a complete proprietary zamindari right.

* "Clause 2.—The talukdar is not entitled to claim partition of his taluk.

"Clause 3.—On the occurrence of an arrear in the payment of revenue, his taluk is liable to sale under sec. 11 of Act VII (B. C.), of 1868, or liable to be brought under khas management on cancellation of the engagement, the arrears being recovered under the certificate procedure.

"Clause 7.—The talukdar is bound to offer a lease at current rates to any person who clears jungle.

"Clause 13.—For violation of any of the conditions of his engagement, the Government has power to cancel the engagement, and thereupon the talukdar loses all right in the taluk. Under special conditions, imposed by order of Government, the protection against enhancement of the rents recorded as payable by them is extended beyond ten years till the settlement expires, and similar protection is extended to many raiyats, who had not acquired rights of occupancy at the time of settlement; and, lastly, the most material distinction between the taluk and the proprietary zamindari right is contained in the 14th clause."

"In case of my refusal to engage for the payment of the amount of revenue, which Government may hereafter deem expedient to fix for the land included in this engagement, I shall be liable to ejectment from the land, and I, having no proprietary right, shall not have any claim for the malikana." (Board of

* The clauses here referred to are clauses of a kabuliyat which the raiyats of the Noabad estate have to execute in favour of Government.

Revenue's No. 693A, dated 18th August 1883, to Government of Bengal, paragrahs 8 and 9.) The views of the Board just quoted were accepted by Government. They were, moreover, acted upon in the settlement proceedings, in which, in some cases, the rent or revenue previously paid by certain talukdars was enhanced, and they were not contested by the talukdars. They may, therefore, be now regarded as authoritative on the points noted. The *itmamdars* of Chittagong are under-tenure holders, subordinate to the talukdars and created by them. If the talukdars do not themselves enjoy tenancies at fixed rents, it is evident that they cannot have created such tenancies binding as against Government, though they may have created subordinate tenures at fixed rates, which may be binding as against themselves. The refusal by a Settlement Officer to recognise an under-tenure at fixed rates created by a talukdar as binding on Government in its assessment of the revenue demand, because it was created without proper authority, is not tantamount to a cancelment of the contract between the talukdar and his undertenant as regards the collection and payment of rent. *Sarbarakari* tenancies (from *Sarbarakar*, a manager or steward), appear to be service tenures. They are prevalent in the districts of Orissa. The status of the Sarbarakars of Khurdah in the district of Pooree is thus described by the Bengal Government (letter No. 124T, dated 5th May 1881, to the Board of Revenue) in the late settlement proceedings of that estate. "They are in some respects Government servants only, but nevertheless are responsible for the full rent of their villages. Their status is, in fact, a mixed and peculiar one. They will be public accountants, liable *primâ facie* for the full rents; but, if on the issue of certificates against them, it is found that they really have not been able to collect more than they have paid, and that the failure to collect is, from some cause beyond their control, then the certificates will not be made absolute against them, and they will be allowed time to take out certificates against the defaulting raiyats.' (Khurdah Settlement Selections, 1882, Vol. III, p. 74.) The Sarbarakars in Government estates are allowed either in the shape of land, for which they pay no rent, or money, a percentage of 20 per cent. on their collections, and other perquisites, such as the rent they collect on lands newly cultivated, the proceeds from dead wood and unsettled fruit trees, and a share of all fish caught. They have the further right of taking possession of lands, which have been abandoned, or which have become vacant by the death of raiyats without successors. They are in return responsible for the collection of the revenue, the keeping of the raiyats' accounts, and the correction and maintenance of the settlement records and maps. Mr. Wilkinson in his settlement report expressed an opinion "that the office of Sarbarakar in Khurdah was hereditary and divisible under the Hindoo Law of inheritance;" but Mr. Halliday, then at the Sudder Board, differed from him. The Government agreed with Mr. Halliday, and in paragraph 5 of its orders, dated 22nd August, 1837, remarked: "As regards the Sarbarakars who, as has been found by Mr. Wilkinson, are merely collectors of certain fixed rents, receiving in land and in a share of the rental about 20 per cent. on the collections, His Lordship entirely agrees with Mr. Halliday that neither the engagements with Government, nor the lands by which the service rendered is remunerated, should be matters of inheritance and liable to sub-division among heirs. The Government has clearly the power to forbid its offices—and such the Sarbarakarships of Khurdah clearly are—or the lands by which the holders of those offices are remunerated, from being subdivided, and the determination to assert and use this power should be distinctly notified to the parties concerned in the manner suggested by Mr. Halliday in

paragraph 7 of his Memorandum. The Board will be pleased to direct accordingly that on all future occasions, except in very particular cases, individuals only should be recognised and dealt with as Sarbarakars." In Government order, No. 1650, dated 31st July 1874, the following passages occur, in which the disability of Sarbarakars to alienate their *jagir* lands is affirmed. "With reference to the Commissioner's recommendation that the Sarbarakars are not to be permitted to sell, mortgage, or in any way incumber any sort of *jagir* lands, the Lieutenant-Governor fully concurs in the necessity of enforcing the rule as regards service lands only, as distinguished from the *lakhiraj* or non-official *jagirs*, held by the Sarbarakars, to which latter class the prohibition is not to apply;" while in Government order, No. 1640, L. R., dated 28th April 1880, it is said: "It must be clearly understood that such *dulbehras* and *dalloees*, as have been admitted to engage as Sarbarakars, are on precisely the same footing as other Sarbarakars, and that their tenure of the jagir lands is not a right personal to the holders, but is attached to the post of Sarbarakar,—a post which is held at the pleasure of Government." (Khurdah Settlement Selections, 1882, Vol. III, p. 62.) There are also numerous judicial rulings to the effect that *Sarbarakari* tenures are indivisible and inalienable without the zamindar's consent. (See *Podmalochan Mandal* v. *Lakhan Birruah*, 2 S. D. A., 1860, 109; *Durjodhan Das* v. *Chuya Dayi*, 1 W. R., 322; *Sadai Purira* v. *Boistob Purira*, 12 B. L. R., 84; 15 W. R., 261; *Kashi Nath Pani* v. *Lakhmani Prasad Patnaik*, 19 W. R., 99; *Dassorathi Hari Chandra Mahapatra* v. *Rama Krishna Jana*, I. L. R., 9 Calc., 526; and *Bhuban Pari* v. *Shamanand De*, I. L. R., 11 Calc., 699). There is one ruling, however, in which such tenures have been held to be transferable. (See *Sadanand Mahanti* v. *Nauratan Mahanti*, 8 B. L. R., 280; 16 W. R., 290.) Other tenancies coming under the head of tenures are *Zati Mokadami* tenures, already described, and *Birt* tenures (from the Sanskrit word *Vritti*, maintenance). The latter tenures are heritable (*Mohendra Singh* v. *Jokha Singh*, 19 W. R., 211) and "transferable, and the annual rent is fixed in perpetuity, but sometimes part of the land is to be held rent-free and the rest of it is to be subject to enhancement." (Field's Landholding, p. 739.) *Birt* tenures prevail principally in the North-Western Provinces, and particularly in the Gorukpore district, but *bekhbirt* tenures (probably from *bhikh*, begging, alms), are said to exist in the Sarun district, and to be often of a considerable size. *Mirasdari* tenures (from *Waras* to inherit) prevail in Sylhet. *Miras* pottahs are freely granted in the district of Dacca and in East Bengal. The interests created by such pottahs are no doubt permanent and heritable, and the rent fixed in perpetuity. But they are probably not, strictly speaking, tenures, but rather raiyati holdings at fixed rates. There is also a tenure current in the Rungpore district, called *upanchaki*, from *panchaki*, a cess of one-fifth. It is an *istimrari* or perpetual tenure (*Shib Kumar Joti* v. *Kali Prasad Sen*, 1 B. L. R., A. C., 167), but apparently not a *mokarari* one; for in *Madhab Janah* v. *Raj Krishna Mukharji* (7 W. R., 86), it was held that a zamindar may sue to enhance *panchaki lakhiraj* land, without previously suing for its resumption. The cause of action in this suit, however, arose in the Hooghly district. Many *ghatwali* and other service tenures are also tenures in the language of this Act.

Temporary tenures or farming leases, are known in Bengal as *Ijaras*, from *ijara*, price, profit, and in Behar, as *Thikas* (from *thik*, exact). *Mustajir* is also a term applied to a farmer, but it seems to be no longer in general use. *Zar-i-peshgi* leases are also common in Behar. *Zar-i-peshgi* means "an advance

of money on the security of a farm. A low-rent, called *Hak-a-giri* is usually reserved to the lessor-mortgagor, and the lessor's right of re-entry at the end of the term is contingent upon the payment of the advance, either in money or by the usufruct of the land." *Satua Patua* and *Sudbharna* leases are leases under which "the whole rent is retained by the lessee until the entire interest and principal of the debt are liquidated." * These leases are peculiar to Behar, and, it is said, that *Satua Patua* leases are common in the Sarun district.

Under-tenures.—According to the Rent Commissioners,† the under-tenures of the Backergunge district are as follows. (1) Zimma taluk; (2) Shamilat taluk, (3) Ashat taluk; (4) Nim ashat taluk; (5) Howla; (6) Ashat howla; (7) Nim ashat howla; (8) Nim howla; (9) Ashat nim howla; (10) Miras karsha; and (11) Kaim karsha. (See *Jagat Chandra Rai* v. *Ram Narain Bhattacharji*, 1 W. R., 126; *Madhab Chandra Ghosh* v. *Nilkant Shaha Rai*, 2 W. R., 42; *Mahomed Kadir* v. *Podmanala*, 2 W. R., 185; *Durga Churn Kar* v. *Anand Mayi Debi*, 3 W. R., 127; *Hari Charn Basu* v. *Meharunissa Bibi*, 7 W. R., 318; *Gopal Lal Thakur* v. *Tilak Chandra Rai*, 10 Moo. I. A., 183; 3 W. R., P. C., 1.) Ashat comes from an Arabic word, *wast*, meaning middle, and *zimma* and *howla* (a corruption of *howala*) signify trust. A former Collector of Backergunge, Mr. R. C. Dutt, has said that "*Kaim karsha* means permanent cultivating right, and *miras karsha* means heritable cultivating right, but both these rights are permanent and heritable by custom, and are reckoned as tenures, and not as raiyati holdings. (Government of Bengal Report, 1884, Vol. II, p. 228.) The under-tenures subordinate to *patni* taluks are *dar-patni*, *se-patni* and *chahar-patni* taluks. The holders of such under-tenures possess all the rights and immunities belonging to patnidars; but these under-tenures cannot be sold summarily as the tenure of the patnidar can. On the other hand, their interests are liable to be annulled by the summary sale of the patni. Tenures subordinate to *Ijaras* and *Thikas* are known as *dar-ijaras*, *katkinas*, and *dar-katkinas*.

Raiyati holdings.—The word "raiyat," it may be here explained, means "subject," and comes from an Arabic word meaning to pasture, feed, or protect. The highest class of raiyati interests is that of raiyati holdings at fixed rents. It is generally considered that the *guzasta* holdings of Shahabad and the *gorabandi* holdings of Bhaghalpore and Monghyr belong to this class. Thus, the conference of officers assembled at Patna in 1884, to report on the provisions of the Rent Bill, expressed an opinion that *Guzastadars* hold at fixed rates (Government of Bengal Report, 1884, Vol. II, p. 81); but this has not yet been settled by the Courts. (See *Jatto Mo'ar* v. *Basmati Koer*, 15 W. R., 479; *Tetra Koer* v. *Bhanjan Rai*, 21 W. R., 268, and *Lal Sahu* v. *Deo Narain Sing*, I. L. R., 3 Calc., 781; 2 C. L. R., 294.) *Gorabandi* holdings are described by Sir William Hunter in his accounts of the Bhaghalpore and Monghyr districts (see Hunter's Gazetteer, Vol. XIV, p. 143, and Vol. XV, p. 117) as raiyati holdings at fixed rents, and the Bhaghalpore Conference declared that they were satisfied that the term *gorabandi* is now used and understood by the raiyats as meaning a raiyati holding at fixed rates. (Government of Bengal Report, 1884, Vol. II., p. 113.) But this point has not yet been decided by the Courts. (See *Lilanand Singh* v. *Nirpat Mahtun*, 17 W. R., 306; *Buti Singh* v. *Murat Singh*, 13 B. L. R., 284, note; 20 W. R., 478; and *Chattarbhuj Bharti* v. *Janki Prasad Singh*, 4 C. L. R., 298.) All *mukarrari* holdings are, of course, holdings at fixed rates.

* Whinfield's Law of Landlord and Tenant, p. 38.

† Report of the Rent Law Commission, paragraph 15, p. 7.

Ordinary raiyati holdings.—Ordinary raiyati holdings are known throughout Bengal as *Jotes*. The Rent Commissioners give an extract from a letter from the Collector of Rungpore (Mr. Glazier), written in 1876, in which he says: "The raiyat who holds direct from the zamindar is called a jotedar, and his holding is a jote, whatever its size, which may, and does vary, from one paying a rent of one rupee, to one of which the rent is half a lakh. . . . . Jotes are saleable quite irrespective of the term during which they have been held, whether jotes held direct from the zamindar, or chukani jotes, which are held from a jotedar. If a man gets a jote to-day, he can legally transfer it by sale to-morrow. Such sales of jotes by registered deed or on decree of Court are of daily occurrence." (Rent Commission Report, Vol. I para. 14, p. 10). The transferability of the jotes of Rungpore, has been admitted by the Courts in the case of *Haro Mohan Mukharji* v. *Lalan Mani Dasi* (1 W. R., 5); but this characteristic does not necessarily apply to the jotes of other parts of Bengal. The same interest is known in other districts of Bengal by names peculiar to the district. Thus, in Nuddea, Jessore, and the 24-Pergunnahs it is called a *ganthi*, which is a Sanskrit word, meaning a knot or engagement. (See *Bipin Bihari Chaudhri* v. *Ram Chandra Rai*, 5 B. L. R., 234.) In parts of the 24-Pergunnahs it is known as a *thika*, in the Sundarbans, as a *chak*, in Backergange as a *karsha*, and in Chittagong as an *etmam* (properly *Ihtimam*)—though, as already pointed out, an *etmam* seems, in Chittagong to have all the characteristics of a tenure. In Jessore, *jotedar* and *ganthidar* seem to mean the same thing. A *jotedar* or *ganthidar* may or may not have the right to hold at fixed rates; but he has not necessarily such a right, simply because he is called *jotedar* or *ganthidar*. There, therefore, appears to be no inherent distinction in Jessore between *jotedar*, *ganthidar*, and *praja*, and the incidents of a holding belonging to a tenant, who is known by one or other of these designations, must be determined by evidence, and must not be assumed to be of any particular description, simply because of the designation by which the owner of the holding is known. (Government of Bengal Report on the Tenancy Bill, 1883, Vol. II, p. 588.) In Behar, a raiyat is called *kashtkar* or *asami*. A jote is often called a jamá, but this term is properly applicable to the rent payable for it. Other terms applied to jotedars in Bengal are *aimadars*, *mandals*, and *jangalburi raiyats*. The word *Aima* is the plural of *Imam*, a saint, and *aimas* are, strictly speaking, grants, either rent-free or subject to the payment of a small quit-rent, made by the Moghal Government to learned and religious persons of the Mahomedan faith, or for religious and charitable uses in relation to Mahomedanism. But the Rent Commission state that the *aimadars* of Midnapore have been decided by the Civil Courts to be only raiyats having a right of occupancy. (See Rent Commission Report, Vol. I, para. 16, p. 11). *Aimas* are common not only in Midnapore, but in the neighbouring districts of Hooghly and Burdwan. Another class of raiyats, the Mandals of Midnapore, are said by the Rent Commission to have come into existence in the following manner: "The zemindar granted a tract of waste land to a substantial raiyat, termed an *abadkar*, who undertook to bring it under cultivation, paying the zamindar a stipulated lump sum as rent. This *abadkar*, partly by the labour of his own family and dependants, and partly by inducing other raiyats to settle under him, gradually reclaimed the greater part of the grant and established a village upon it, to which he usually gave his name, and, as the head of the settlement, he was called *mandal* or headman. The zamindar and the *mandal* from time to time re-adjusted the terms of their bargain but the zamindar never interfered between the *mandal* and his under-tenants. In Settlement Proceedings of 1839 these *mandals* were declared to have only the rights of

Sthani or *khudkasht* ryots, and not to be entitled to any *munafa* or profit; but though not exactly recognized as *talukdars*, they gradually acquired rights superior to those of ordinary *khudkasht* raiyats; and, as they were left to make their own terms with the raiyats settled by them, they must have had a very considerable profit, besides what they obtained from any land cultivated by themselves. Their *mandali* right became transferable by custom; and when at the Settlement they came into immediate contact with Government, though not recognized as regular *talukdars*, they were held entitled to the consideration which in Bengal has usually been accorded to the first reclaimer of the virgin-soil. The Government in Settlement-proceedings deducted fifteen per centum from the gross *jama* in their favour; and, after some demur, they accepted this as a sufficient recognition of their status." (Rent Commission Report, Vol. I, para. 17, p. 11.) *Jangalburi* leases (*buri* means cutting) are reclaiming leases. Sec. 8, Reg. VIII of 1793, now repealed, describes *jangalburi* taluks as hereditary and transferable taluks, granted for the clearance of jungle-land at first rent-free, and after the expiration of a certain time subject to a specific rent on so much of the land as is brought into cultivation, the rent being adjusted according to pargana rates. But such leases would create tenures or raiyati interests according as it was intended that the original lessee should merely establish tenants on the land, or bring the land into cultivation by means of his own labour, and that of his family and servants. Another raiyati interest is the *utbandi* tenancy, sometimes called a *nukan* jote, which prevails in the Nuddea district. It is a tenancy from year to year—and sometimes from season to season—the rent being regulated according to the area under cultivation by the appraisement of the crops on the ground, and according to its character. The cultivators may change their lands every year; but, as a rule, they can keep them for certain for three years, if they elect to do so. Generally, the lands under this system are cultivated from one to five years, and then left fallow for the same period. (See note to sec. 181.) Another similar system of cultivation is known as the *halhasili* system, under which lands are held from year to year, the rent varying sometimes according to the area of land cultivated, and sometimes according to the crop raised each year. This system prevails in the Patna district (where it is also called *bar shara fasl patta*), in North Bhaghalpore, in Purneah, and in Maldah. In Patna, it is said, the cash-rent is determined on the spot on inspection of the crops as they stand. In North Bhaghalpore, the lands cultivated each year are measured, and rent is charged for at the prevailing rate for the class of land under cultivation. No allowance is made for partial failure. In Purneah, the rates formerly varied with the actual crops grown, but now, as a general rule, one rate prevails for all crops. In Maldah, two kinds of *halhasili* tenancies prevail. In the south of the district, the tenants take a lease of a specified area of land, for which they are bound to pay a specified rent for the *rabi* crop, whether cultivated or not, and an additional rent, at a specified rate, for such lands of the holding as bear a *bhadoi* or second crop. In the north of Maldah, the *halhasili* system involves a change of lands by individual raiyats at least once in every three years, if not oftener. But a tendency has grown up to retain continuously under cultivation the most favoured qualities of land, and only to exchange the more distant and less fertile lands. A local peculiarity, as regards exchange of land, is, if the land, not required for the cultivation of the season, is remote from the bank of a river, the zamindar at once resumes it on the tenant ceasing to use it. If it is near a river, the tenant does not give up his lien, but has to pay the zamindar a small rental on each bigha of unused land, generally calculated on the

supposition that the land has yielded one crop during the year. This arrangement is again modified by conditions of population. Where the demand for land is small, the zamindar is glad to accept anything he can get from the holder of the disused land. The Patna Conference reported that the following other systems of tenancy prevail in Behar: (1) The *hastbudi* system, the name of which is derived from *hast* (that which exists), and *bud* (that which did exist). This is very similar to the *utbandi* system. The rate of rent is fixed at so much a bigha, but rent is charged only for so much area as is actually bearing crops at the time of the harvest. (2) The *balkat*, a tenancy similar to the *halhasili*, and in which the rent is fixed by calculation, on the field, of the quantity of the produce and its price. (3) *Jaidádi* a peculiar system adopted on bad and uncertain lands such as *deara*, or riparian, land subject to inundation, the principle of which is that the full rent agreed upon is paid on land in any year in which any crop whatever is grown upon it. (4) The *mani bandobast* (from *man*, a maund), under which the rent (calculated in money) varies with the price of grain. The Bhaghalpore Conference reported that the following additional systems of tenancy prevailed in the Bhaghalpore division: (1) the *husoaphar*, which is said to prevail in the Muddehpurah subdivision on the banks of the Kosi and Gugri, and under which the raiyats pay rent only for lands on which crops are reaped,—the reason for this being the danger of destruction by inundation; (2) the *hastabudi*, which prevails in the north-east of Bhaghalpore, where the raiyat pays a separate rent for each crop he cultivates according to area; and (3) the *sairábádi*, under which a raiyat cultivates for the season any lands he can get possession of, and pays cash rent according to the area on which the crop is raised. Many service-tenancies, such as tenancies of *chaukidari* and *chakeran* lands, are probably raiyati interests and not tenures; but their incidents are not affected by this Act (see sec. 181).

Under-raiyats.—An under-raiyat is generally known in Bengal as *kurpha praja*. When under-raiyats halve the produce with their raiyat-landlord, they are called *burgadars* or *adhiyadars*. In Rungpore they go by the name of *chukanidars*, and *dar-chukanidars*, in Backergunge by that of *kole kurshadars*, in Behar by that of *Shikmi*, *petao*, or *kaloiti* raiyats. In certain parts of the Purneah district a ploughman's interest is called *dhotar*. The under-raiyat finds his own plough, and pays half the produce as the rent of the land. In Behar, a system of sub-letting to indigo-planters, called the *kurtaoli* system, has sprung up. The Collector of Sarun describes it thus: "A *kurtaoli* lease is a sub-lease by a raiyat of his whole holding to the indigo-planter with the condition that the planter is to retain a certain specified portion of the land for indigo, and that he is to re-sub-let the rest to the raiyat lessor." . . . . In "nine cases out of ten, it is a defensive alliance between the planter and the raiyat against the interference and exactions of the zamindars. The planter assumes the whole of the raiyat's responsibility in regard to the payment of the rent of the holding and effectually protects him from harassment and illegal exactions. . . . . The raiyat, at the same time, is safe, under the terms of the lease, in the possession of his other lands (viz., those which the planter does not require for indigo) . . . . The planter, on the other hand, is safe from being suddenly ousted, and having his indigo-crops distrained and sold in a rent-suit by the zamindar against the raiyat." (Government of Bengal Report, 1884, Vol. II, p. 95.)

But with regard to all the interests in land described above, it is to be remarked that it is most unsafe for the Courts to base any conclusions as to the incidents of any particular interest on the fact of its bearing a particular designation.

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As pointed out above, the incidents of a jote in Rungpore are very different from those of a jote in Jessore. *Shikmi* land in Gya is alleged by the tenants to be land held at a fixed rate of rent; while in other parts of Behar and Bengal *shikmi* tenants are under-raiyats with very limited rights. The incidents of a *sarbarakari* tenure in the Balasore district are not necessarily identical with those of a tenure of the same name in Pooree, and the incidents of a *sarbarakari* tenure may differ, even in the same district, according as it is held under Government or under a private zamindar. It is, therefore, advisable for Courts to take evidence on the subject before coming to any conclusion as to what the incidents of a tenure or holding are.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of Rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases. Reg. VIII of 1793, s. 51

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

This section applies to tenures not held at a fixed rent or rate of rent.—This section applies to tenures which have been held from the time of the Permanent Settlement, but not at a fixed rent, or fixed rate of rent. Tenures which have been held from the time of the Permanent Settlement at a fixed rent, or fixed rate of rent, are dealt with in sec. 50; and it will be seen, on reference to that section, that the rent of such tenures cannot be enhanced except on proof of increase in area. It would at first sight appear, from there being no mention of alteration in area in this section (*i.e.*, sec. 6), that tenures held from the time of the Permanent Settlement, but not at a fixed rent, or fixed rate of rent, are not liable to enhancement on the ground of increase in area; while, from the terms of cl. (*b*) it would seem, as if there were no provision made for the reduction of a tenure-holder's rent on account of a diminution in the area of his tenure. But this is not the case. The present section must be read in connection with sec. 52, which provides that *every tenant* shall be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent

has been previously paid by him ; and shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist.

This section founded on Sec 51, Reg. VIII of 1793.—In the present section are embodied the provisions of cl. 1, sec. 51, Reg. VIII of 1793. The terms of the two sections are nearly identical ; but in the present section the expression "local custom" has been substituted for the words "special custom of the district," which are used in the Regulation of 1793. Further, the words "otherwise than on account of a diminution of the area of the tenure" have been inserted in cl. (*b*) of the present section, so as to make it clear that a reduction in the rent of a tenure, the area of which has been diminished by diluvion or other causes, does not, on this account, render the rent of the tenure liable to subsequent enhancement, provided that the tenure has existed from the time of the Permanent Settlement.

Reductions of rent entitling landlord to enhance.—The reductions alluded to in this section are clearly expressed reductions of rent for special reasons. The simple fact that the rent has become less by degrees has been held not to be an abatement of rent as contemplated by sec. 51. Reg. VIII of 1793 (*Nobo Krishna Mazumdar* v. *Tara Mani*, 12 W. R., 320) ; and in a suit by a zamindar against his *talukdar* for an increase of rent under Reg. VIII of 1793, s. 51, the notice served was held to be defective, because it did not state when, and for what reason, the talukdar had received an abatement of his jama, and thereby rendered himself liable for the increase demanded. (*Nobo Krishna Basu* v. *Mazamudin Ahmad Chaudhri*, 19 W. R., 338.)

No notices of enhancement now required.—Hitherto, before a proprietor could proceed to enhance the rent of his tenure-holder under sec. 51. Reg. VIII of 1793, he has been required by a long series of High Court decisions* to give the talukdar a notice, specifying the grounds on which he is about to enhance, though the law itself was silent on the subject. The present Act does not prescribe the issue of any notices of enhancement. So large was the percentage of cases that failed in the past, owing to absence of proof of service of these notices, or owing to the notices being defective in form, that the issue of notices of enhancement has, in this Act, been altogether dispensed with. The institution of the enhancement-suit is now all the notice that is required to be given to the tenant.

Evidence of tenure being held from time of Permanent Settlement.—As to the amount of evidence required to show that a tenure has been held from the time of the Permanent Settlement, it is to be observed that it is not necessary that a taluk should have been registered at the time of the Decennial Settlement. It is sufficient to show that the tenure existed, and was capable of being registered at the time of the Decennial Settlement (*Bama Sundari Dasi* v. *Radhika Chaudhurani*, 13 Moo. I. A , 248 ; 4 B. L. R., P. C., 8 ; 13 W. R., P. C., 11 ; *Nilmani Singh* v. *Ram Chakrabarti*, 21 W. R., 439 ; *Ishan Chandra Banarji* v. *Harish Chandra Shaha*, 24 W. R., 146) ; and the fact that a *shikmi* taluk is not mentioned in the Decennial or Quinquennial Settlement as such, and that the lands are included in the Decennial Settlement as part of the zamindari for which the jama is assessed on the zamindar, does not afford any strong inference against the existence of the taluk at that time ; for the taluk, being only a *shikmi* taluk,

* 3 W. R., Act X, 26 ; 12 W. R., 112, 320, 506 ; 14 W. R., 251, 274 ; 15 W. R., 335 ; 7 B. L. R , App. 14, 45, 47 ; 19 W. R., 338 ; 20 W. R., 459 ; 21 W. R., 439 ; 25 W. R., 200 , I. L. R., 2 Calc., 125, I. L. R , 5 Calc., 823.

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paying rent to the zamindar, the talukdars were not required to mention it, nor was it necessary for the zamindar to do so. (*Wise* v. *Bhuban Mayi Debi*, 10 Moo. I. A., 174.)

Onus of proof.—The onus of proof, when the question arises as to whether a tenure has been held from the time of the Permanent Settlement or not, will ordinarily lie on the tenure-holder, who raises this plea. (*Gopal Lal Thakur* v. *Tilak Chandra Rai*, 10 Moo. I. A., 183 ; 3 W. R., P. C., 1.) But where it is found that a taluk is a dependent taluk within the purview of sec. 51, Reg. VIII of 1793, the burden rests upon the plaintiff-zamindar to show that the rent is variable. (*Bama Sundari Dasi* v. *Radhika Chaudhurani*, 13 Moo. I. A., 248 ; 4 B. L. R., P. C., 8 ; 13 W. R., P. C., 11.) In the case of *lakhiraj* lands, however, which have been resumed by Government, and subsequently purchased by a zamindar, who seeks to enhance the rent, it lies on the zamindar to show that the land was included in the zamindari at the time of the Permanent Settlement. (*Ahsanullah* v. *Bassarat Ali Chaudhri*, I. L. R., 10 Calc., 920.)

Limits of enhancement of rent of tenures

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency, or at the expense, of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation ; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion

of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Customary rate.—The expression "customary rate" now takes the place of "the pargana or current rates," which was the limit up to which a zamindar, proceeding under sec. 51, Reg. VIII of 1793, could hitherto enhance. (*Bama Sundari Dasi* v. *Radhika Chaudhurani*, 13 Moo. I. A., 248; 4 B. L. R., P. C., 8; 13 W. R., P. C., 11.) The Courts have hitherto held that the rents of talukdars are not to be enhanced on the same grounds as those on which the rents of occupancy-raiyats were enhanceable under the old law. Accordingly, in numerous cases, it has been laid down, that talukdars' rents are to be enhanced according to the rates paid by talukdars of a similar description, and holding the same quality of land, and with similar advantages, and not according to *raiyatwari* rates (*Gauri Prasad Das* v. *Swarnamayi*, 6 W. R., Act X, 41; *Mohima Chandra De* v. *Guru Das Sen*, 7 W. R., 285; *Haro Sundari Chaudhurani* v. *Ananda Mohan Ghosh*, 7 W. R., 459; *Dhanpat Singh* v. *Gumun Singh*, 9 W. R., P. C., 3; *Manikarnika Chaudhri* v. *Anando Mayi Chaudhri*, 10 W. R., 245; *Surasundari Debi* v. *Ghulam Ali*, 19 W. R., 142); and in a recent case (*Bisheshari Debi Chaudhurani* v. *Hem Chandra Chaudhri*, I. L. R. 14 Calc., 133) it has been held that the rate of rent to be fixed as payable by the tenure-holder must ordinarily be fixed with reference to the rents paid by raiyats within the tenure itself, and not with reference to those paid by raiyats in the neighbourhood outside the limits of the tenure. The words "full customary rates" do not imply that the rates are permanently fixed, and cannot be enhanced (*Bharat Chandra Aich* v. *Gaur Mani Dasi*, 11 W. R., 31; *Kasimuddin Khundkar* v. *Nadi Ali Tarafdar*, 11 W. R., 164); and there is nothing to prevent the rent of a dependent taluk, which has been once enhanced, from being enhanced again (*Bisheshari Debi Chaudhurani* v. *Hem Chandra Chaudhuri*, I. L. R., 14 Cal., 133.) But under sec. 9 of this Act, when the rent of a tenure-holder has been enhanced by the Court or by contract, it cannot be enhanced again for fifteen years.

Limits up to which a tenure-holder's rent may be enhanced.—A Court, when enhancing a tenure-holder's rent, may fix it at any rate which it thinks fair and equitable, provided it leaves him a profit of 10 per cent. on the net collections. In the case of tenure-holders there is no presumption as to the fairness and equity of existing rents, as there is with regard to the rents of occupancy-raiyats (sec. 27), and the provisions of sec. 104, which make such a presumption applicable to all rents, only apply when settlement-proceedings under Chap. X of this Act are in progress.

Tenure-holder's profits.—The case of *Banchanand* v. *Hargopal Bhadri* (1 Sel. Rep., 145) first laid down the rule to be followed when it is impossible to ascertain what the pargana-talukdari rates are, and fixed the customary profit of the talukdar at 10 per cent. The principle laid down in this decision was afterwards adopted by the Legislature in Reg. V, 1812, sec. 8; and though this section was repealed by Act X of 1859 without any rule being substituted in its place, its principle was generally recognized in the assessment of such tenures. (See *Mahomed Ainuddin* v. *Rajendra Chandra Neogi*, 2 Board's Rep., 749.) In the case of *Ramkant Datta* v. *Ghulam Nabi Chaudhri* (2 Sel. Rep., 55), however, the Court, following "local custom," held, that the talukdar was entitled to hold free

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of assessment 4 kanees in every drone, as *jibka* (or land granted for the maintenance of a family), and 2 kanees, 4 gandas per drone, as *mattan* (or land allotted as remuneration for bringing waste lands into cultivation). In *Bama Sundari Dasi* v. *Radhika Chaudhurani* (1 W. R., 339), it was merely said that the *talukdars*, not being common raiyats, were entitled to a deduction for expenses of collection. In the case of *Swarnomayi* v. *Gauri Prasad Das* (3 B. L. R., A. C., 270), only 6½ per cent. was allowed as the talukdar's profit; but this was partly because it was proved that he was realizing for *bastu* and other lands higher rates than those allowed in the estimate on which the percentage was calculated. He was further held entitled under a local custom, known as "*Bishan Kancha*," to a deduction of 2 kattas per bigha for certain lands, called "*dokundah*" lands, that is, lands bearing two crops in the year, as well as 8½ per cent., as collection-charges. The Legislature in sub-section (3) of the present section follows the rule laid down in *Banchanand* v. *Hargopal Bhaduri* and sec. 8, Reg. V of 1812, to this extent, that it fixes 10 per cent. as the minimum percentage of profit to be left to the tenure-holder; but it fixes no maximum. At one time it was proposed to restrict the tenure-holder's profits to 30 per cent., and, on the other hand, to provide that the enhanced rent should not be more than double the previous rent. But both these restrictions were ultimately abandoned, and the section now provides that a profit of at least 10 per cent. must be left to the tenure-holder, while he can obtain as much more as the Court may think fair and equitable.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

The provisions of this section may be compared with those of sec. 37 (1) which limit a landlord's right of enhancing an occupancy-raiyat's rent to a much greater extent than his right of enhancing a tenure-holder's rent is limited by this section.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms

of a contract between him and his landlord, liable to be ejected :

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Permanent tenures how created.—Tenures become permanent, (1) by law, (2) by contract, express or implied, and (3) by custom and course of dealing therewith. *Patni* tenures, under Reg. VIII of 1819, are instances of tenures, which are permanent by express provision of law.

Tenures permanent by contract.—When tenures are made permanent by the express contract of the parties, there is no difficulty. Thus, words making the tenures heritable, such as, "with your sons and grandsons in succession" (*Watson* v. *Jogeshwar Atta*, Marsh., 330), or "do you, and the generations born of your womb, successively enjoy the same" (*Bhubon Mohini Debi* v. *Harish Chandra Chaudhri*, I. L. R., 4 Calc., 23) clearly create permanent tenures, and the grant of an absolute (*mustakkil*) *mokarari* to the grantee and her children from generation to generation gives a transferable interest of the most absolute kind, which does not revert to the grantor on failure of heirs (*Himmat* v. *Sunit Koer*, 15 W. R. 549). But there is often very great difficulty in determining whether tenures, which are not made permanent by law or express contract, are of a permanent nature or otherwise. In such cases it is important to consider the name and conditions of the tenure, the terms of the instrument by which, and the circumstances in which, it was created, and, as far as can be ascertained, the intention of the parties. (See *Watson and Co.* v. *Mohesh Narain Rai*, 24 W. R., 176 ; and *Sheo Prasad Singh* v. *Kali Das Singh*, I. L. R., 5 Calc., 543.) Sometimes the name of the tenure in itself will settle the question. Thus, in *Tarini Charn Ganguli* v. *Watson* (3 B. L R., A. C., 437, 12 W. R., 413), it was held that the term "*patni taluk*" *primâ facie* imports a hereditary tenure, and in *Krishna Chandra Gupta* v. *Safdar Ali* (22 W. R., 326) it was said that the word "*taluk*" imports a permanent tenure, and where a *chitta* describes the land to which it relates as a "taluk," the presumption in the absence of any evidence to the contrary is that it implies a permanent interest. In other cases, the conditions of the tenure help to determine its nature. Thus, in *Lekhraj Rai* v. *Kanhya Singh* (17 W. R., 485, (I. L. R., 3 Calc., 210; L. R., 4 I. A., 223) it was held that, though the lease contained no words importing an hereditary character, it yet had the effect of being hereditary, as the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure. A *jangalburi* lease, under which no rent was payable for the first year, but rent was payable at varying rates for three years, and afterwards at "the full customary rate" of Rs. 5 per kani, has been held to convey a permanent tenure. (*Ghulam Ali* v. *Gopal Lal Thakur*, 9 W. R., 65, and 19 W. R., 141.) Khurakpore *ghatwali* tenures (in Monghyr) have also been held to be permanent and hereditary tenures. (*Manoranjan Singh* v. *Lilanand Singh* 3 W. R., 84 ; 5 W. R., 101 ; I. L. R., 3 Calc., 251.) As to the terms of the instrument creating the tenure, it is to be observed that in several cases it has been held, that the word *mokarari* alone in a pottah does not necessarily import perpetuity (*Government of Bengal* v. *Jafar Hossain Khan*, 5 Moo. I. A., 467 ; *Sheo Prasad Singh* v. *Kali Das Singh*, I. L. R., 5 Calc., 543 ; *Bilasmoni Dasi* v. *Sheo*

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Prasad Singh, I. L. R., 8 Calc., 664 ; 11 C. L. R., 215), or inheritance (*Parmeswar Pratab Singh* v. *Padmanand Singh*, I. L. R., 15 Calc., 342). The words "*tikka mohto*" in a pottah have been held not to be tantamount to *maurasi* or *istimrari*, and not to import a permanent and hereditary lease at a fixed rent. (*Naffar Chandra Shahu* v. *Gossain Jaisingh Bharati*, 3 W. R., Act X, 144.) The words "year by year" in a pottah have also been held not to convey a hereditary lease at a fixed rent. (*Panchanan Basu* v. *Piari Mohan Deb*, 2 W. R., 225.) There are, however, conflicting rulings as to the effect of the use of the terms *mokarari istimrari* in an instrument creating a tenure. Thus, it has been held that these words in a pottah must be taken in themselves to convey a hereditary right in perpetuity. (*Manaranjan Singh* v. *Lilanand Singh*, 3 W. R., 84; *Lakhu Koer* v. *Hari Krishna Singh*, 3 B. L. R., A. C., 226 ; 12 W. R., 3 ; *Karunakar Mahanti* v. *Niladhro Chaudhri*, 5 B. L. R., 652 ; 14 W. R., 107.) But in *Lilanand Singh* v. *Manaranjan Singh* (13 B. L. R., 124) a *quære* was raised as to whether, in the absence of any usage, the words *mokarari istimrari* mean permanent during the life of the grantee, or permanent as regards hereditary descent, and in a recent case—*Tulsi Prasad Singh* v. *Ram Narain Singh* (I. L. R., 12 Calc., 117)—it has been said by their Lordships of the Privy Council that the words "*istimrari mokarari*," in a pottah granting land, do not "of themselves, denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless, in addition to the above words, such expressions as '*ba farzandan*' or '*naslan bad naslan*,' or similar terms are used. Without the latter, the other terms of the instrument, the circumstances under which it has been made, or the conduct of the parties may shew the intention with sufficient certainty to enable the courts to pronounce the grant to be perpetual ; the above words not being inconsistent therewith, though not in themselves importing it."

Tenures permanent by custom and course of dealing therewith.—The *howlas* and *nim-howlas* of Backergunge may be cited as instances of tenures which are permanent and hereditary by custom. (*Haro Mohan Mukharji* v. *Lalan Mani Dasi*, 1 W. R., 5.) There are numerous decisions which show that tenures become permanent by the course of dealing therewith by the parties. Thus, it has been held that though a pottah does not contain the word *mokarari*, or equivalent words of limitation as "from generation to generation," and, therefore, cannot be presumed *primâ facie* to grant a *mokarari istimrari* tenure, yet evidence of long uninterrupted enjoyment at a fixed unvarying rent will supply the want of words of limitation in a pottah. (*Dhanpat Singh* v. *Guman Singh*, 11 Moo. I. A., 433 ; *Gopal Lal Thakur* v. *Tilak Chandra Rai*, 10 Moo. I. A., 191 ; 3 W. R., P. C., 1 ; *Satyasaran Ghosal* v. *Mohesh Chandra Mittra*, 12 Moo. I. A., 263 ; 2 B. L. R., P. C., 23 ; 11 W. R., P. C., 10 ; *Kolodip Narain Singh* v. *Government of India*, 14 Moo. I. A., 247 ; 11 B. L. R., 71 ; *Watson* v. *Mohesh Narain Rai*, 24 W. R., 176.) Applying the maxim of *optimus interpres rerum usus*, it may be shown by evidence as to the nature of the enjoyment of any immoveable property what the grant in its origin really was. Accordingly, the frequent transfer of an interest in a tank without any change in the terms of the holding or in the amount of rent paid, extending over more than 60 years was held to prove that the interest was a permanent and transferable one, which could be maintained against the proprietor of the taluk in which the tank was situate. (*Nidhikrisna Basu* v. *Nistarini Dasi*, 21 W. R., 386). In another case, mere continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenant held under a *maurasi* title. (*Brajanath Kundu* v. *Lakhi Narain Addi*, 7 B. L. R., 211.)

But in a recent case (*Nabin Chandra Datta* v. *Madan Mohan Pal*, I. L. R., 7 Calc., 697), it has been held that the mere fact of long possession does not raise the presumption that a tenure is a permanent one.

Effect of occupation of land with buildings.—The rulings as to whether the long occupation of land with buildings will raise a presumption that the nature of the tenure is permanent, are somewhat conflicting. In *Addoyto Charan De* v. *Peter Das* (13 B. L. R., 417; 17 W. R., 383), no such presumption was held to have arisen. In *Prasanno Kumari Debi* v. *Ratan Baipari* (I. L. R., 3 Calc., 696), it was said that there was no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house upon the land demised. This ruling was followed in the case of *Tarakpodma Ghosal* v. *Shyamacharan Napit* (8 C. L. R., 50), in which it was said that there is no law in this country, which gives anything in the way of a protected tenure or holding to a person who has occupied homestead-land, however long may have been the period of his possession. Then, in *Arat Sahu* v. *Prandhan Paikara* (I. L. R., 10 Calc., 502), it was held in the case of a tenant of some homestead-land in Orissa, who in some Settlement-proceedings had been recorded as the tenant at a stated rent, that the Court was not bound to presume that the origin of the tenant's title was a grant to continue in permanent possession. On the other hand, in *Brajanath Kundu* v. *Stewart* (8 B. L. R., App. 51; 16 W. R., 216), in which a landlord had allowed his lessee to invest capital in erecting buildings on land let for cultivation, and had raised no objection for a considerable number of years, he was not allowed to disturb the holding; and in *Jahari Lal Sahu* v. *Dear* (23 W. R., 399), it was laid down that, when land is given to a lessee for the purpose of building a house to live in, without any term being fixed for the tenancy, the tenure of the house and land cannot be taken away from the lessee's heir or his vendee, so long as he continues to pay the rent assessed on it. Then, in *Prasanno Kumar Chatarji* v. *Jagannath Baisak* (10 C. L. R., 25), it was held that, though the mere circumstance of a tenant occupying buildings upon property would not justify the Court in presuming a permanent grant, unless it could be shown that they were erected by him or his predecessors, yet, when land was let for building purposes, or the tenant, with the knowledge of his landlord, laid out large sums upon the building, that fact, coupled with a long continued enjoyment of the property by the tenant or his predecessors, might justify a Court in presuming a permanent grant. Finally, in *Gangadhar Shikdar* v. *Ayimuddin Shah Biswas* (I. L. R., 8 Calc., 960; 11 C. L. R., 281), it has been said that when it is conceded that lands were not let out for agricultural purposes, and when they had apparently been let out more than sixty years before the suit for building purposes, and the defendant's ancestors had erected thereon buildings of a substantial character, and had, with the defendants, resided thereon from first to last, the Court is at liberty to presume that the grant was of a permanent character.

Ejectment of permanent tenure-holders.—It is important to notice that, under this section, a permanent tenure-holder cannot be ejected from his tenure except on the ground that he has broken a condition of his tenancy which, if the contract of tenancy has been made after the commencement of this Act, must be one consistent with its provisions, and on breach of which he is, under his contract, liable to be ejected. This was also the case under the former law. (See *Alam Chandra Shaha* v. *Moran*, W. R., Sp. No., Act X, 31; *Augar Singh* v. *Mohini Datta Singh*, 2 W. R., Act X, 101; *Mahomed Faiz Chaudhri* v. *Shib Dulari Tewari*,

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16 W. R., 103 ; *Balaram Das* v. *Jogendronath Mallik*, 19 W. R., 349 ; *Mumtaz Bibi* v. *Grish Chandra Chaudhri*, 22 W. R., 376.) A permanent tenure-holder cannot, therefore, be ejected for non-payment of his rent (sec. 65). The remedy of his landlord in this case is to bring the tenure to sale. In this respect, an occupancy-raiyat stands on the same footing as a tenure-holder ; but he can also be ejected on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy (sec. 25). This provision, of course, does not apply to tenure-holders. Non-occupancy raiyats stand in a much inferior position to tenure-holders and occupancy-raiyats. A non-occupancy-raiyat can be ejected, (*a*) for non-payment of arrears of rent, (*b*) for rendering the land unfit for the purposes of the tenancy, (*c*) for breaking a condition of his contract, on breach of which he is liable to be ejected, (*d*) on the ground of expiry of his initial lease, if it be a registered one, and (*e*) for refusing to pay a fair and equitable rent (sec. 44), or on the ground that the term for which he is entitled to hold at such rent has expired. As to what breach of the conditions of the contract will render a tenure-holder liable to ejectment, it may be noted that though, in the case of service-tenures, which, though unaffected by this Act (sec. 181) are yet analogous to tenures affected by it, the landlord may not, at his own pleasure, dispense with the services and take back the lands (*Kulodip Narain Singh* v. *Mahadeo Singh*, 6 W. R., 199 ; *Kulodip Narain Singh* v. *Government*, 14 Moo. I. A., 247 ; 11 B. L. R., P. C., 71 ; *Lilanand Singh* v. *Manoranjan Singh*, I. L. R., 3 Calc., 251), yet a distinct refusal to perform the services will be such a breach of the conditions of the tenancy as will subject the tenant to ejectment (*Harogobind Raha* v. *Ram Ratno De*, I. L. R., 4 Calc., 67). But whatever conditions the tenure-holder may agree on with his landlord as rendering him liable to be ejected, he cannot make a contract enabling his landlord to eject him, otherwise than in accordance with the provisions of this Act (sec. 178, sub-sec. (1), cl. (*c*)), that is to say, except in execution of a decree (sec. 89).

Suits to eject a tenure-holder on the ground of a breach of a condition, in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach, must, under Art. 1, Sched. III of this Act, be brought within one year of the date of the breach ; and, under sec. 155, before ejecting him, the landlord is bound to give him a notice and afford him an opportunity of remedying and paying reasonable compensation for the breach of the conditions of his lease complained of. Under the former law, the Courts have in such cases always granted relief from forfeiture, and declined to eject the tenant for a breach of a condition of his lease which is susceptible of being remedied. (*Jan Ali Chaudhri* v. *Nittyanand Basu*, 10 W. R., F. B., 12 ; *Duli Chand* v. *Meher Chand Sahu*, 12 B. L. R., 439 ; *Mathura Mohan Pal* v. *Ram Lal Basu*, 4 C. L. R., 496 ; *Mahomed Amir* v. *Dianat Ali*, 9 C. L. R, 185 ; I. L. R., 7 Calc., 566 ; *Duli Chand* v. *Raj Kishor*, I. L. R, 9 Calc., 88 ; 11 C. L. R., 326.)

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Transfer and transmission of permanent tenure.

Transferability of permanent tenures.—The provisions of this section make a change in the law ; for hitherto some permanent tenures have been

transferable, and others, non-transferable. Now, all permanent tenures are made transferable and heritable, "subject to the provisions of this Act." These words, no doubt, have reference *inter alia* to the provisions of sec. 183, which lay down that nothing in this Act shall affect any custom, usage, or customary right not inconsistent with, or not expressly, or by necessary implication, modified or abolished by, its provisions. It is, therefore, an open question whether permanent tenures, not transferable before, are made transferable now. Cases of permanent tenures, which are not transferable, are not numerous. Of these, the ghatwali tenures of Bhirbhum are instances; such tenures, as already pointed out, are by sec. 181, specially exempted from the provisions of the Act. But even such tenures become transferable, if the zamindar assents to and accepts the transfer. Such assent and acceptance it has, in a recent case, been said, may be presumed from the fact of the zamindar's having made no objections to a transfer for a period of over twelve years; and when such a fact has been found, a Court ought to recognize such a transfer. (*Anando Rai* v. *Kali Prasad Singh*, I. L. R., 10 Calc., 677.) *Maurasi Sarbarakari* tenures in Orissa also are not transferable without the consent of the zamindar, though they are heritable. (See note on p. 31.) Instances of permanent tenures held to be transferable are more numerous. (See *Jagat Chandra Rai* v. *Ram Narain Bhartacharji*, 1 W. R., 126; *Brajanath Kundu* v. *Lakhi Narain Addi*, 7 B. L. R., 211; *Panye Chandra Sirkar* v. *Har Chandra Chaudhri*, I. L. R., 10 Calc., 496.) In certain cases the Courts have held, that tenures granted for the purposes of building are transferable. Thus, in *Beni Madhab Banarji* v. *Jai Krishna Mukharji* (7 B. L. R., 152; 12 W. R., 495), it was held, that such tenures are, by the custom of the Hooghly district, transferable. In this case, Peacock, C. J., expressed an opinion that when land was leased for the purpose of living upon such land, the tenure, in the absence of evidence to the contrary, is assignable. In another case, the cause of action arising in the Tipperah district, in which the tenant had been permitted to erect a thatched dwelling-house with mud walls, and to dwell in it for more than forty years, it was held that he had an assignable interest in the house and land, which could, therefore, be seized and sold in execution of a decree. (*Durga Prasad Misra* v. *Brindaban Sukal*, 7 B. L. R., 159.) In one case, it was held that a building tenure, which was not permanent, might be transferable under the custom prevailing in the locality (*Shama Sundari Debi* v. *Nobin Chandra Kolya*, 6 C. L. R., 117.) This was a Hooghly case.

Onus of proof as to transferability of tenures under old law.—There is no presumption that any tenure held is not a transferable tenure; and a landlord, who sues for khas possession on the ground that a tenure sold was not transferable, must establish his case as an ordinary plaintiff (*Dayá Chand Shaha* v. *Ananda Chandra Sen*, I. L. R., 14 Calc., 382); but in a more recent case in which the defendant pleaded that his tenure was of a permanent and transferable nature, it was held that the onus of proving its transferability was upon the defendant (*Kripa Mayi Debi* v. *Durga Gobind Sirkar*, I. L. R., 15 Calc., 89).

Heretability of permanent tenures.—Formerly permanent tenures were almost invariably held to be heritable, even when not transferable (*Watson* v. *Jageshar Atah*, Marsh., 330; *Lakhu Koer* v. *Hari Krishna Singh*, 3 B. L. R., 226; 12 W. R., 3; *Karunakar Mahanti* v. *Niladhro Chaudhuri*, 5 B. L. R., 652; 14 W. R., 107; *Lekhraj Rai* v. *Kanhya Singh*, 17 W. R., 485; I. L. R., 3 Calc., 210); though in *Lilanand Singh* v. *Manoranjan Singh* (13 B. L. R., 124) a *quære* was raised as to whether, in the absence of any usage, words implying permanency in the tenure implied anything more than permanent for the life of the grantee. Now,

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however, as in sec. 3 (8) the words "permanent tenure" are defined as meaning a tenure which is heritable and which is not held for a limited time, all permanent tenures must be heritable.

Sub-letting of permanent tenures.—A further incident, which attaches to permanent tenures, is subsequently dealt with in sec. 179, in which it is said that nothing in this Act shall be deemed to prevent a proprietor or holder of a permanent tenure in a permanently settled area from granting a permanent *mokurari* lease on any terms agreed on between him and his tenant.

Abandonment of permanent tenures.—A voluntary abandonment of a permanent and transferable tenure for a long period without any inevitable force major or other cause beyond the power of the holder, is tantamount to an express relinquishment; and neither the holder nor any one under him can reclaim it. (*Chandramani Nyabhusan* v. *Sambhu Chandra Chakrabarti*, W. R., Sp. No., 1864, 270.) But such a tenure cannot be put an end to at the option of the tenure-holder. A patnidar cannot, of his own choice, throw up his patni, and, by so doing, escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court and after proper enquiry. (*Hira Lal Pal* v. *Nilmani Pal*, 20 W. R., 383.) In a recent case (*Jadunath Ghosh* v. *Schoene, Kilburn and Company* I. L. R., 9 Calc., 671), it was ruled that a tenure under a *mauras mokarari* lease of land, which is not let for agricultural purpose, cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord. In the same case, it was held by Field, J., that the principle laid down in *Hira Lal Pal* v. *Nilmani Pal*, viz., that a patnidar cannot of his own option relinquish his tenure, is applicable to all intermediate tenures between the zamindar and cultivator of the soil, except those held on farming leases.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or [usufructuary] mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely :—

(*a*) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure : provided that no such fee shall be less than one rupee or more than one hundred rupees ; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

The word "usufructuary" in sub-section (2) has been added by Act VIII of 1886.

Payment of the landlord's fee in the case of rent-free tenures.—It has been asked, who is the landlord of a rent-free tenure, to whom the fee mentioned in sub-section 2 (*b*) is to be paid? The landlord in this case will be the owner of the estate, within which the rent-free tenure is situated, and to whom rent would have been payable for the tenure, if it had not been rent-free. "Landlord" means a person immediately under whom a tenant holds (sec. 3 (4)), and "tenant" means a person who holds land under another person, and is or, but for a special contract, would be, liable to pay rent for that land to that person. A person may, therefore, be a landlord, though he receives no rent for his land; and in the case of a rent-free tenure, there is, of course, a special contract between the parties under which no rent is payable for the land. It has, however, been contended that the word "rent" in cls. (*a*) and (*b*) means money-rent, and that the fee of Rs. 2 referred to in cl. (*b*) is payable when no money-rent but a produce-rent is payable for the tenure. But this contention would seem not to be warranted by the terms of the section; though it is difficult to see how a registering officer, if a produce-rent is payable for the tenure, is to collect and to transmit through the Collector the fee of 2 per cent. on the annual rent, referred to in cl. (*a*), or why a landlord, to whom no rent is payable, should receive a fee on a transfer of a tenure, which he does not register, and with which he has little or no concern.

Government entitled to landlord's fee in case of transfer of tenures or holdings in Government estates.—Government is entitled to the landlord's fee under secs. 12 to 18 of the Bengal Tenancy Act in the case of the transfer of tenures or holdings by tenure-holders or raiyats holding at fixed rates of rent in Government estates. (Board of Revenue's No. 414 A of the 13th April, 1888, to the Inspector-General of Registration, and also para. 2, Board of Revenue's No. 278 A of 15th April, 1886, to the Commissioner of Presidency division.)

A single fee chargeable for a tenure consisting of several plots.—A separate fee should not be charged under sec. 12. (2) (*b*), on each of the several plots comprising a tenure, but a single fee for the whole tenure, when transferred by one instrument. (Board of Revenue's No. 283-A of the 4th May, 1887, to the Commissioner of the Presidency division.)

Remittance of landlord's fee.—When the landlord resides in another district the fee should be sent to him by remittance transfer receipt. (Accountant General's Circular No. $\frac{T.\ M.}{178}$ of the 10th June, 1886.) Sub-Registrars located at a distance from the sadar or sub-divisional head-quarters (where the absence of a treasury makes remittances difficult) should remit the landlord's fees to the Collector or Sub-divisional Officer concerned by means of money-orders, the

commission payable on them being defrayed by the Sub-Registrars out of their permanent advance. Remittance transfer receipts are available at par for such remissions, and should be used, if possible; but as they can only be obtained on sadar treasuries, they cannot be used in every case. (Inspector-General of Registration's Circular No. 20 of July 28th, 1887.)

When landlord's fee is to be placed in deposit.—It has been held by the Board of Revenue that, when the landlord's fee is payable to co-sharers, the Collector should pay the fee to the co-sharers in accordance with the amount of their shares recorded in the Land Registration department of the Collectorate. If any objection is made before payment, the amount should be placed in revenue deposit, and the parties referred to the Civil Court. The fee should also be placed in deposit when a landlord refuses to receive the fee tendered to him under sec. 12, or is dead, or cannot found. Any one claiming a fee so deposited must establish his claim to the satisfaction of the Collector. If no claim is advanced or established within three years from the date of the deposit, or if a suit relating to the deposit is pending in the Civil Court, the deposit should be credited to Government, after which it cannot be paid without Government sanction. The rules relating to ordinary revenue deposits apply in all respects to deposits under the Tenancy Act. (Board of Revenue's No. 201 of 6th May, 1886, to the Commissioner of Rajshahye.) The Board of Revenue have also recently issued directions that in order to guard against the needless accumulation of fees in the hands of the Nazir and his peons, the fees should be placed in deposit in the first instance, when it is apparent on the notice accompanying the fee that the fee cannot be tendered personally. (Board of Revenue's Land Revenue Report, 1887-88, para. 152, p. 28. See also Board's instruction on Rule 1, Chapter V, of the Government Rules under the Tenancy Act, Appendix I.)

Landlords' fees payable to Government how to be credited.—Fees under secs. 12 to 15 payable to Government as landlord are to be credited as miscellaneous revenue receipts after being realized in cash, and should be shown by Collectors in Table V of Return No. X, under heading (1) as "Fees under Act VIII of 1885." (Board of Revenue's C. O. No. 2 of September, 1886.)

Court-fee Duty on applications for the payment of landlords' fees.—Applications for the payment of landlords' fees placed in the deposit must be made on stamped paper. (Government letter No. 70—25L.R., dated 7th January, 1887, to the Board of Revenue.) Applications for the refund of landlords' fees must be stamped under Art. 1, Sch. II, Act VII of 1870 (Board of Revenue's No. 170A of the 22nd March, 1888, to the Commissioner of Dacca). The Court-fees payable on the application would seem to be 1 anna, if the amount of the deposit is less than Rs. 50 (cl. (*a*), para. 4), and 8 as., if the amount of the deposit exceeds Rs. 50 (cl. (*b*), para. 2). If, however, the amount of the deposit does not exceed Rs. 25, and the application is made within three months of the date when the deposit became payable to the applicant, the application is exempt from Court-fee duty. (Government of India Notification, No 849 of February 16th 1883, *India Gazette*, Pt. I, p. 122.)

Sub-divisional Officers.—Sub-divisional Officers have been vested with powers of a Collector under secs. 12, 13, and 15 of the Bengal Tenancy Act by Government Notification of the 7th October, 1886, published in the *Calcutta Gazette* of the 13th idem.

Procedure when fee is payable to several landlords residing in different districts.—When a tenure transferred is held jointly by several

proprietors residing in different districts, the landlord's fee should be remitted to the Collector within whose jurisdiction the transferred tenure is situated. (Board of Revenue's No. 779A of the 7th September, 1887, to the Inspector-General of Registration, and No. 655A of the 14th October, 1887, to the Commissioner of the Presidency Division.)

Procedure when tenure-holder is resident in Calcutta.—When notices under the Tenancy Act have to be served on landlords residing in Calcutta, registering officers should send the notices and fees direct to the Collector of the 24-Parganas, who is also the Collector of Calcutta and who will take the necessary steps for their service. The Deputy Collector of Calcutta cannot legally be vested with powers under the Act, but it is open to the Collector of the 24-Parganas to use the Deputy Collector's office as the channel for the service of notices, etc., on tenure-holders residing in Calcutta. (Board of Revenue's No. 89A of the 16th February, 1888, to the Commissioner of the Presidency Division.)

No notice required when the landlord himself purchases the tenure.—On a reference from the Board of Revenue, the Legal Remembrancer has expressed an opinion that when the landlord has himself purchased the tenure, there is no necessity for a second notice being given with its consequent charge. (Legal Remembrancer's No. 686 of the 27th August, 1887, to the Secretary to the Board of Revenue.)

Mode of service of notice of transfer.—The mode of service of notices of transfer is prescribed in Rule 1, Chapter V of the Government Rules under the Tenancy Act, to which and to the notes on it reference is invited (see Appendix I).

Rules of the Registration department.—The rules of the Registration department for the registration of documents under this section will be found in Appendix IV.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, [or when a mortgage of a permanent tenure, other than a usufructuary mortgage thereof, is foreclosed] the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure,* [or making a decree or order absolute for the foreclosure] require the purchaser [or mortgagee] to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale [or final foreclosure] on the landlord as may be prescribed.

* XIV of 1882.

(2) When the sale has been confirmed, [or the decree or order absolute for the foreclosure has been made] the Court shall send to the Collector the landlord's fee and a notice of

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the sale [or final foreclosure] in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

The words in brackets in this section have been added by Act VIII of 1886.

Object of the Amending Act, VIII of 1886.—The Hon'ble Mr. Evans, in moving for leave to introduce into Council the Bill which has now become Act VIII of 1886, and which received the assent of His Excellency the Governor-General on the 8th March, 1886, remarked as follows:—"The object of this Bill is stated in the Statement of Objects and Reasons as follows: 'It is to limit the registration of mortgages in landlords' records to those mortgages which are accompanied by possession and usufruct, and thereby to give effect to what was, in fact, the intention of the Legislature when the Bengal Tenancy Act was passed.' The necessity for this very small measure arises in this way. The object of these two sections, 12 and 13, of the Bengal Tenancy Act, is to substitute an official record in the first instance, and an official machinery for recording the transfer of permanent tenures, providing that the fee which the landlords are entitled to receive upon such transfers should be sent to the Collectors, who should themselves notify the transfers to the zamindars, who are to be able to make the necessary entries in their sheristas for their own guidance in dealing with the tenures. Formerly the state of the law was, that it was necessary, when any transfer by gift, sale, or otherwise took place of a permanent tenure, that this transfer should be registered in the zamindari sherista, and on that registration the zamindars were in the habit of getting a small fee. It was found inconvenient, for many reasons which I need not dilate upon; and it was proposed in the new law that the Registrar should take the fee and register, and that no such transfer should take place without registry and the payment of a fee and a notification through the Collector to the zamindar. This was the machinery which was substituted for the former one, and considered more effective. It will be noted, from what I have said, that the old words were 'a transfer by gift, sale, or otherwise;' and it had not, as a matter of fact, been held that a mortgage came within this definition at all, nor was it the practice that zamindars should demand that mortgages should be registered in their sheristas, and the reason, of course, is not far to seek. It was because, while the mortgages were simply intended to raise money on lands, without any transfer or the creation of new tenants by such mortgage, it did not, as a matter of fact, concern them at all. When the new Act was being made, and when provisions were being introduced for the transferability of raiyati holdings, it was feared by the zamindars that, under the guise of mortgages by which a mortgagee was to be put in possession, a transfer would, in point of fact, be effected of these occupancy-holdings, so as to defeat their right of pre-emption. A good deal of discussion took place in regard to that matter; but although some proposals were made for limiting the operation of this word 'mortgage' to a mortgage involving immediate possession, the matter was dropped out of sight owing to the abandonment by the Government of the provisions with regard to the transferability of occupancy-holdings, and so it came to pass that, when there existed the corresponding words in the provisions with regard to the registration and transfer of permanent tenures, the matter was also, more or less, lost sight of. The result is that, as the words stand at present, in certain classes of mortgages, particularly in mortgages after the English form, which are declared by the Transfer of Property Act to be tranfers of property with the right of reconveyance—the result is, that, whereas

an English mortgage is really only a method of raising money, which allows the tenure-holder to remain in possession, the transaction being one with which the landlord has nothing to do, yet this transaction may not take place without all those formalities, the description of the tenure, the payment of a fee, and notices to the landlord, and all the rest of it; and although it is probable that simple mortgage-bonds, which do not carry possession with them, can be made without this difficulty, still it is very certain that mortgages in English form may not be made without this result. The result of the law has been very serious inconveniences. Although the number of mortgages registered in Calcutta since the passing of the Act is very small, yet a very considerable number of mortgages are kept back owing to this difficulty."

According to the Transfer of Property Act (IV of 1882), there are four kinds of mortgages: (1) Simple mortgage, (2) mortgage by conditional sale, (3) usufructuary mortgage, and (4) English mortgage. By a simple mortgage, neither title nor possession passes. By a mortgage by conditional sale and by an English mortgage, title passes, but not necessarily possession. By a usufructuary mortgage, possession passes, but not title. The object of Act VIII of 1886 would seem to be to exempt mortgages, by which possession, but not title, passes, from payment of the landlord's fee prescribed by sec. 12. It, therefore, provides that, in cases of mortgages other than usufructuary mortgages, the landlord's fee shall not be leviable until a decree or order absolute for foreclosure is made by a Court. But should possession be subsequently delivered without a suit being instituted or a decree for foreclosure being made, then, it would appear as if, in the cases of mortgage by conditional sale and English mortgage, the whole rights of the mortgagor may virtually pass to the mortgagee without the landlord's fee being recoverable under the provisions of this Act.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

The object of the provisions of this section is not apparent. The Collector has no duty to discharge with regard to this notice, and the information given in it does not concern him. The section was, perhaps, framed with reference to the Bill for the registration of permanent tenures, which it was at one time proposed to introduce.

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

Forms of and rules for the service of notices under these sections.—Forms of notices under secs. 12, 13, 14, and 15 will be found in Schedule I, appended to the Government Rules under the Tenancy Act. Rules for their service will be found in sec. 1, Chap. V, of these rules. (See Appendix I.)

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of, and succession to, share in permanent tenure.

The provisions of sec. 88 simply reproduce the proviso to sec. 27, Act X of 1859, and sec. 26, Act VIII (B. C.) of 1869, to the effect that no division of a tenure or holding, or distribution of the rent payable in respect thereof, will be binding on the landlord, unless it is made with his consent in writing.

Procedure to be adopted by Registering officers under this section.—The Inspector-General of Registration has issued the following Circular on this point: "The question whether the procedure prescribed in section 12 of the Tenancy Act should be carried out by Registering Officers in the case of the transfer of *parts* of a tenure or holding, when the partition has not been made with the landlord's consent in writing, has been recently referred to the Legal Remembrancer. That officer has given his opinion that section 12 of the Tenancy Act in no way recognises, or provides for, the transfer of a fractional interest in a tenure; and unless such a transfer is lawful under some other law, it gains no validity from this section. The provisions of the section having no application, the rule it makes as to landlord's fee will be equally inapplicable." (Inspector-General of Registration's Circular No. 15 of 20th June, 1888.) It would seem, then, that when a deed purporting to transfer a part of a tenure or holding at fixed rates, made without the consent of the landlord in writing, is presented for registration, registering officers should register it, but should not apply the procedure prescribed by sec. 12 of the Act,—that is to say, they should exact no landlord's fee and should send no notice of the transfer to the Collector.

Former law regarding the registration of transfers of permanent tenures.—The provisions of secs. 12 to 15 take the place of those of sec. 27, Act X of 1859, and sec. 26, Act VIII (B C.) of 1869, which provided that all dependent talukdars and other persons possessing a permanent transferable interest in land, intermediate between the zamindar and cultivator, should register in the sherista of the zamindar or superior tenant, to whom the rents of these taluks or tenures were payable, all transfers of such taluks or tenures, or portions of them, by sale gift, or otherwise, as well as successions thereto and divisions among heirs in cases of inheritance, and that all zamindars or superior tenants should admit to registry and otherwise give effect to all such transfers, when made in good faith, and to all such

successions and divisions.[1] There are numerous rulings to the effect that transfers made without notice to, and unrecognized by, the landlord were invalid. (*Sarkies* v. *Kali Kumar Rai*, W. R., Sp. No., 1864, Act X, 98; *Hari Charn Basu* v. *Maharunissa Bibi*, 7 W. R., 318; *Mritanjai Sirkar* v. *Gopal Chandra Sirkar*, 2 B. L. R., A. C., 131; 10 W. R., 466; *Miajan* v. *Karuna Mayi Debi*, 8 B. L. R., 1; *Kashinath Pani* v. *Lakhmani Prasad Patnaik*, 19 W. R., 99; *Sham Chand Kundu* v. *Brajanath Pal*, 21 W. R., 94; 12 B. L. R., 484; *Uma Charn Chattarji* v. *Kadambini Debi*, 3 C. L. R., 146; *Panye Chandra Sirkar* v. *Har Chandra Chaudhari*, I. L. R., 10 Calc., 496.) But it has been held that the receipt of rent by the landlord will cure the defect of non-registration. (See *Nobo Kumar Ghosh* v. *Krishna Chandra Banarji*, W. R., Sp. No., Act X, 112; *Bharat Rai* v. *Ganga Narain Mahapatra*, 14 W. R., 211; *Dhanpat Singh* v. *Villayat Ali*, 15 W. R., 211; *Ananda Mayi Dasi* v. *Mohendra Narain Das*, 15 W. R., 264; *Allender* v. *Dwarkanath Rai*, 15 W. R., 320; *Nobin Chandra Sen* v. *Nobin Chandra Chakrabarti*, 22 W. R., 46.) In the case of *Mritanjai Sirkar* v. *Gopal Chandra Sirkar* (2 B. L. R., A. C., 131; 10 W. R., 466), it was said that the mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant is not sufficient notice to the zamindar of such purchase; nor is the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant; but it is otherwise when there is acceptance with notice, notwithstanding that the transfer had not been registered. So, in *Ram Gobind Rai* v. *Dashu Ojha Debi* (18 W. R., 195), it was held that a landlord, by having allowed the sums paid into the Collectorate by a third party to be carried to his credit, had clearly recognized the transfer from the tenant to the third party, although such transfer had not been registered. Further, in *Ram Kishor Acharji* v. *Krishna Mani Debi* (23 W. R., 106), it was held that where a zamindar makes a transferee a party to a suit for rent, and accepts a decree against him jointly with other persons, he must be held to have recognized the transferee as a tenant, although the latter's name may not have been entered as such in the zamindar's books. Similarly, when a landlord sells his tenant's interest, in execution of a decree for arrears of rent, he must be held to accept the auction-purchaser as his tenant. (*Prasanno Mayi Dasi* v. *Bhubo Tarini Dasi*, 10 W. R., 494.) Then, there are rulings to the effect that, notwithstanding an invalid transfer of a permanent tenure, the landlord is not entitled to recover possession either from the transferor or the transferee. Thus, in *Kashinath Pani* v. *Lakhmani Prasad Patnaik* (19 W. R., 99), it has been said that while a zamindar is not bound to recognize the transfer of a permanent heritable tenure effected without his consent, yet the fact of such improper transfer does not deprive the old *sarbarakar* of his rights, or entitle the zamindar to get *khas* possession. (See also *Haro Mohan Mukharji* v. *Chintamoni Rai*, 2 W. R., Act X, 19; *Jai Krishna Mukharji* v. *Raj Krishna Mukharji*, 5 W. R., 147.) Again, the unregistered transferee of a transferable tenure cannot be treated by the zamindar as a trespasser; as against the zemindar, who has evicted him, he has a right to be restored to possession. (*Nobin Krishna Mukharji* v. *Shib Prasad Pattak*, 8 W. R., 96; *Harish Chandra Mukharji* v. *Anando Chandra Chatarji*, 9 W. R., 279; but see *contra*, *Muktakeshi Dasi* v. *Piari Chaudhurani*, 7 W. R., 158.) He is also entitled, as a person interested in the protection of the tenure, to stop its sale in execution of a decree under Act VIII (B.C.) of 1865, by paying into Court the amount of the decree; though he is not entitled, unless the transfer is registered, to come in and allege that the person against whom the decree has been obtained was not the proprietor of the under-tenure, and was not in legal possession. (*Anand Lal Mukharji* v. *Kalika Prasad Misra*, 20 W. R., 59; *Khettra Pal Singh* v. *Lakhi Narain Mitra*, 15 W. R., 125.) Substantially the same

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principle was laid down in the recent case of *Krishna Chandra Ghosh* v. *Rajkrishna Bandopadhya* (I. L. R., 12 Calc., 24), the facts of which are as follows: K, the recorded tenant of a *maurasi mokarari* tenure, died leaving G, his son and heir, who sold the tenure, which eventually came into the hands of the plaintiffs, who, though they made attempts to do so, never obtained the registration of their names as tenants. R, one of the two shareholders in the zamindari, brought a suit for arrears of rent of the tenure against S, and in execution of the decree he obtained in that suit, the tenure was sold and purchased by the other zamindar, by whom the plaintiffs were dispossessed. It was accordingly held that the plaintiffs were not precluded, by the fact that their names were not registered as tenants under sec. 26 of Act VIII of 1869 (B.C.), from bringing a suit to recover possession of the tenure. The holder of the decree, in execution of which the tenure was sold, assuming him to be only a shareholder in the zamindari right, had no right under sec. 64 to sell the tenure, but only the interest of the person against whom the decree was passed. The onus was on the defendant to show that the sale under the decree for rent was of such a nature as to give him priority over the plaintiffs.

Present system of registration of transfers of, and successions to, permanent tenures.—The provisions of secs. 12 to 15 of this Act now provide a different system. They provide a system of *official* registry of the transfers of, and successions to, permanent tenures, under which the landlord is enabled, but not compelled, to register such transfers and successions, and under which, provided the provisions of the sections are complied with, his registration or non-registration is immaterial, the transfer or succession taking effect irrespective of his wish or pleasure. The system is briefly this. As regards voluntary transfers (sec. 12), every such transfer has to be registered under the ordinary law relating to the registry of assurances. The parties applying for registration are required to pay to the registering officer the landlord's fee (sec. 12, sub-sec. 2), and a process fee for the service of notice on the landlord. When the registration has been completed, the registering officer forwards to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector, thereupon, causes the landlord's fee to be paid to the landlord, and the notice to be served upon him, at the same time taking any such steps as may hereafter be prescribed for the entry of the transfer in the official registers. Similar provisions have been made in cases of sale for an ordinary decree (sec. 13) and of succession (sec. 15). In case of sale for arrears of rent (sec. 14), the Court holding the sale gives notice to the Collector, but there is no necessity for the latter to give notice to the landlord, who has himself brought the tenure to sale, and there is, consequently, in this section no provision for service of notice on the landlord. There is, however, no penalty provided for non-compliance with these provisions, except in the case of succession (sec. 15), when the person succeeding to the tenure cannot recover by legal proceedings any rent until he has given the Collector notice of his succession and paid the prescribed fees. In case of a non-compliance with the provisions of sec. 12, on the part of a transferee of a permanent tenure, the landlord's only remedy would seem to be to refuse all recognition of the transfer, which of course is invalid, and to continue recovering the rent from the former tenure-holder. If he does not pay, the landlord can sue him for arrears of rent, and sell the tenure; but the tenure cannot be dealt with as cancelled, or possession of it recovered either from the transferor or transferee.

Effect of the present system.—The Board of Revenue's Land-Revenue Report for 1887-88 shows that the provisions of secs. 12 to 15 are not working in

a satisfactory manner. With regard to sec. 15, the Board observe (para. 154, p. 28) that—"it is clear that this section is no more than a dead letter. It is evident that so long as rent is paid and received, neither the landlord nor the tenure-holder cares to take the trouble of causing the name of the tenure-holder to be changed." On the subject of the payment of landlords' fees, the Board remark (para. 155, p. 28): "The feeling of reluctance on the part of landlords to accept these fees continues to prevail, and in many cases, therefore, the fees are deposited in the Treasury, and will ultimately lapse to Government. The refusal to accept is due to a belief on the part of the landlords that, by accepting, they will preclude themselves from contesting the validity of the transfer afterwards. There is no real foundation for this impression; but it exists, as the local reports sufficiently show, in all portions of the province."

Proposed rescission of secs. 12 to 15.—On this subject, the Board, in the above cited report, go on to say (para. 155, p. 28): "It has already been suggested by the Board that, as the Bill for the registration of permanent tenures has been allowed to drop, there seems no sufficient ground for retaining in the Tenancy Act, the secs. 12 to 15, which were intended by the framers of that Act to supplement the provisions of a law, which it was understood would be introduced in the Bengal Council for the registration of tenures. There is no doubt of the great increase of work, which the operation of these sections has created in Collectors' offices; and it is not apparent that any corresponding advantage has been obtained from them. In some respects these sections remain a dead letter; in others they appear to fail in their object, because the zemindar refuses to be bound by them. The time appears to have arrived, when the opinion of officers and of the landholding classes generally, both landlords and tenants, should be invited whether the sections should be retained in the law or not. It should not be difficult in those districts, where permanent under-tenures are common, to ascertain the feeling of tenure-holders on the subject."

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Status of raiyats holding at fixed rates.—The effect of cl. (*a*) of this section is to place a raiyat holding at a rent, or rate of rent, fixed in perpetuity in substantially the same position as a permanent tenure-holder. The provisions

of secs. 10 to 17 will, therefore, apply to a raiyat holding at a fixed rate of rent. It is to be noted that it is immaterial whether the raiyat has held at a fixed rate for a long or for a short period, and whether he is a "settled raiyat" or not. If a raiyat's rent is fixed in perpetuity, he at once acquires all the rights of a permanent tenure-holder with regard to the transfer of, and succession to, his holding. But the provisions of secs. 7 to 9 with regard to the enhancement of rent are not applicable to him; as his rent, being fixed in perpetuity, cannot be enhanced. He is, however, liable to have his crops distrained for arrears of rent (sec. 121), which is not the case with a tenure-holder. A raiyat holding at a fixed rate of rent is also in the same position as a permanent tenure-holder as regards ejectment. He can only be ejected on the ground that he has broken a condition of his lease, for a breach of which he is expressly liable to be ejected; but his landlord's right to eject him on this ground is of course subject to the provisions of sec. 155. A suit to eject on this ground must be brought within a year from the breach. (Sch. III, art. 1.) But there is this difference between his case and that of a tenure-holder, that, while the condition of his lease, for a breach of which he is liable to be ejected, must be consistent with this Act, whether it be made before or after the commencement of this Act, a tenure-holder can be ejected for a breach of a condition of his lease, which is inconsistent with this Act, provided it has been made before the commencement of the Act. (See sec. 10.)

Produce-rents are not rents at fixed rates.—The rulings of the High Court on this point are conflicting. In *Thakurani Dasi* v. *Bisheshar Mukharji* (B. L. R., F. B., 326; 3 W. R., Act X, 29); *Ram Dayal Singh* v. *Lachmi Narain* (6 B. L. R., App., 25; 14 W. R., 388); *Jatto Moar* v. *Basmati Koer* (15 W. R., 479), and *Hanuman Prasad* v. *Kaulesar Pandi* (I. L. R., 1 All., 301), it has been held that a rent in kind, which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear as to such produce, is a fixed rent within the meaning of sec. 3 of Act X of 1859. On the other hand, in *Yakub Hossain* v. *Wahid Ali* (4 W. R., Act X, 23); *Hanuman Prasad* v. *Ramjag Singh* (H. C. R., N. W. P., 1874, 371), and *Thakur Prasad* v. *Mahomed Bakir* (8 W. R., 170), it has been held that a *bhaoli* rent, varying yearly with the varying amount of the gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is not a fixed unchangeable rent, to which the presumption of law, laid down by sec. 4, Act X of 1859, is applicable. The Select Committee on the Bengal Tenancy Bill also came to the conclusion that produce-rents are not rents at fixed rates, for they finally decided on omitting a sub-section, which it was at first proposed to introduce into the Act, making the presumption of sec. 50, that a tenure-holder or raiyat who has held for twenty years at an unchanged rate shall be presumed to have held at that rate from the time of the Permanent Settlement, applicable to produce-rents. Sir Steuart Bayley, in introducing the Bill, explained the Select Committee's reasons for omitting this sub-section as follows: "It seemed clear to us," he said, "that where the rent is paid in kind, although the proportion of the gross produce remains the same, yet by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room therefore for the presumption." (Selections from Papers relating to the Bengal Tenancy Act, 1885, p. 421.)

Guzastha holdings of Shahabad.—There is a kind of tenure current in the district of Shahabad, which is called a *guzastha* tenure. It would appear that a *guzasthadar* is a raiyat having a right of occupancy and whose rent can be

enhanced. (*Lal Sahu* v. *Deo Narain Singh*, I. L. R., 3 Calc., 781 ; 2 C. L. R., 294.) In another case, it has been said, that "a *Guzastha* tenure may or may not be a tenure at a fixed rent." (*Jatto Moar* v. *Basmati Koer*, 15 W. R, 479 ; *Tetra Koer* v. *Bhanjan Rai*, 21 W. R., 268.) The conference of officers assembled at Patna in 1884 to consider the provisions of the Bengal Tenancy Act, however, reported that *guzasthadars* held at fixed rates. (Govt. of Bengal Report, 1884, Vol. II, p. 81.)

Gorabandi holdings.—In *Chatterbhuj Bharti* v. *Janki Prasad Singh* (4 C. L. R., 298), it was said that there are no decided cases to show that *gorabandi* rights are more extensive than rights of occupancy, or, if more extensive, that they are transferable. The Bhagalpore conference, however, observed : "Without offering an opinion as to the exact original meaning of the term *gorabandi*, we are satisfied that it is now used and understood by the raiyats to mean a raiyati-holding at fixed rates. There are many instances of these holdings being transferred." (Govt. of Bengal Report, 1884, Vol. II, p. 113.)

CHAPTER V.

OCCUPANCY-RAIYATS.

This chapter must be read with sec. 116, which provides that nothing in this chapter shall confer a right of occupancy in a proprietor's private or demesne lands, where any such land is held under a lease for a term of years, or under a lease from year to year.

General.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

Occupancy-rights could be acquired by custom under the old law.—The saving of custom, enacted by this section, is in accordance with previously existing law ; for, though it was formerly generally assumed that a raiyat could not acquire occupancy-rights, except under the provisions of Acts X of 1859 and VIII of 1869, B. C., this was not the case. Act X, it has been said, "did not take away the right of any raiyat who had a right by grant, contract, prescription, or other valid title to hold at a fixed rate of rent." (*Thakurani Dasi* v. *Bisheshar Mukharji*, B. L. R., F. B., 326 ; 3 W. R., Act X, 108. See also *Ishar Ghosh* v. *Hills*, W. R., Sp. No. F. B., 148, and *Lalanand Singh* v. *Nirpat Mahtun*, 17 W. R., 306.)

Acquisition of rights of occupancy under the old law.—Under the provisions of sec. 6, Act X of 1859, and sec. 6, Act VIII of 1869, B. C., raiyats who cultivated or held the same land for a period of twelve years, acquired rights of occupancy in that, but in no other, land, whether in the same village or not. The rulings of the High Court, in interpreting the terms of these sections, are very

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numerous. We reproduce here a few of them, showing (1) who acquired, and (2) who did not acquire, rights of occupancy under the old law.

Who acquired occupancy-rights under the old law.—Tenants holding lands under *bye-howladari* tenures can acquire rights of occupancy. (*Ratanmani Debi* v. *Kamlakant Talukdar*, 12 W. R., 364.) Tenants holding land under *bhagdari* or *bhaoli* tenures (*i. e.*, tenures in which a portion of the produce is paid as rent) can acquire rights of occupancy. (*Harihar Mukharji* v. *Bireshar Banarji*, 6 W. R., Act X, 17; *Jatto Moar* v. *Basmati Koer*, 15 W. R., 479.) *Utbandi* tenants, that is, tenants who hold from year to year and season to season such parcels of land as they choose to cultivate,—the rent being regulated by an appraisement of the crop on the ground, and according to its character and to the area sown year by year,—can acquire occupancy-rights. (*Premanand Ghosh* v. *Surendra Nath Rai*, 20 W. R., 329. (See sec. 180.) Raiyats having *gorabandi* rights have rights of occupancy in their land. (*Chatterbhuj Bharti* v. *Janki Prasad Singh*, 4 C. L. R., 298.) Raiyats holding land for more than twelve years, but under several written leases or pottahs, each for a specific term of years, were entitled to claim rights of occupancy, unless there was an express stipulation to the contrary. (*Sheo Prokash Misra* v. *Ram Sahai Singh*, 8 B. L. R., 165; 17 W. R., 62; *Narain Singh* v. *Mansur Raut*, 25 W. R., 155.) Raiyats let into land on a lease for a limited term, but allowed to hold on after the expiry of the term, acquired rights of occupancy, if their total occupation exceeded twelve years. (*Ibadatulla* v. *Mahomed Ali*, 25 W. R., 114. See *contra*, *Kabil Shaha* v. *Radha Krishna Mallik*, 16 W. R., 146.) Raiyats were entitled to add the occupation of their fathers or other persons from whom they inherited, to their own, to make up the period of twelve years. (*Watson* v. *Sharat Sundari Debi*, 7 W. R., 395; *Nim Chand Baruah* v. *Murari Mandal*, 8 W. R., 127; *Lal Bahadur Singh* v. *Solano*, I. L. R., 10 Calc., 45; 12 C. L. R., 559.) Members of a firm owning an indigo concern, and taking a *cultivating* lease of land, can acquire rights of occupancy in that land. (*Laidley* v. *Gaur Gobind Sirkar*, I. L. R., 11 Calc., 501.) Raiyats might acquire rights of occupancy, even though the person to whom they paid rent had no title to the land. (*Amir Hossein* v. *Sheo Sahai*, 19 W. R., 338; *Sheo Prakash Misra* v. *Ram Sahai Singh*, 8 B. L. R., 165; *Zulfan Bibi* v. *Radhika Prasanno Chandra*, I. L. R., 3 Calc., 560; 1 C. L. R., 388; *Ghulam Panja* v. *Harish Chandra Ghosh*, 17 W. R., 552.) A raiyat who, instead of cultivating the land, set up shops on it and received profits from the shopkeepers, could acquire a right of occupancy. (*Khajarunnissa Begum* v. *Ahmad Reza*, 11 W. R., 88.) Raiyats could acquire rights of occupancy whether they cultivated the land with their own hands, or whether the cultivation was carried on at their risk and on their behalf by members of their families, by servants, or by hired laborers. (*Ram Mangal Ghosh* v. *Lukhinarain Shaha*, 1 W. R., 71; *Kali Charn Singh* v. *Amiruddin*, 1 W. R., 579.) Non-payment of rent did not bar the acquisition of occupancy-rights (*Narain Rai* v. *Opnit Misra*, 11 C. L. R., 417; I. L. R., 9 Calc., 304); involve a forfeiture of them (*Masyatulla* v. *Nurzahan*, I. L. R., 9 Calc., 808; *Brajendra Kumar Rai* v. *Bango Chandra Mandal*, 12 C. L. R., 389; *Nilmoni Dasi* v. *Sonatan Doshayi*, I. L. R., 15 Calc., 17), or put an end to the relation of landlord and tenant (*Rango Lal Mandal* v. *Abdul Ghaffur*, I. L. R., 4 Calc., 314; *Paresh Narain Rai* v. *Kashi Chandra Talukdar*, I. L. R., 4 Calc., 661). A right of occupancy could be acquired in respect of an undivided share of an estate. (*Jardine, Skinner & Co.* v. *Sarat Sundar Debi*, 25 W. R., 347; 3 C. L. R., 140. See also *Muktakeshi Dasi* v. *Kailash Chandra Mitra*, 7 W. R., 493; *Guru Prasanno Rai* v. *Gobindo Prasad Das*, 1 W. R., 34;

Kali Prasad v. *Shah Latafat Hossein*, 12 W. R., 418. See *contra*, *Roghuban Tewari* v. *Bishen Datta*, 2 W. R., Act X, 92; and *Sarat Sundari Debi* v. *Binny*, 25 W. R., 347.) A right of occupancy could be gained in land used for grazing horses. (*Fitzpatrick* v. *Wallace*, 11 W. R., 231.) A right of occupancy could be acquired by a cultivator in that portion of the land which was used for his habitation, as well as in that portion which was cultivated. (*Mohesh Chandra Gangopadhya* v. *Bishonath Das*, 24 W. R., 402; *Pogose* v. *Raju Dhobi*, 22 W. R., 511.) A right of occupancy in land includes the same right in respect of a tank appurtenant to it. (*Nidhi Krishna Basu* v. *Ram Das Sen*, 20 W. R., 341.) A right of occupancy can be acquired in spite of eviction for a time, provided the eviction be wrongful. (*Mahomed Gazi Chaudhri* v. *Nur Mahomed*, 24 W. R., 324.)

Who did not acquire occupancy-rights under the old law.—A trespasser could not acquire a right of occupancy. (*Pir Baksh* v. *Miahjan*, W. R., Sp. No., F. B., 146; *Gharib Mandal* v. *Bhuban Mohan Sen*, 2 W. R., Act X, 85; *Ghulam Haidar* v. *Purna Chandra Rai*, 3 W. R., Act X, 147; *Bhubanjai Acharji* v. *Ramnarain Chaudhri*, 9 W. R., 449; *Ishan Chandra Ghosh* v. *Harish Chandra Banarji*, 10 B. L. R., App., 5; 18 W. R., 19.) Mere permissive possession without any right conferred no right of occupancy. (*Mohar Ali Khan* v. *Ram Ratan Sen*, 21 W. R., 400.) Possession in the capacity of a servant did not create the right. (*Uma Mayi Barmanya* v. *Bokn Behara*, 13 W. R., 333.) A person occupying as the assignee of a zamindar and cultivating, because of the opportunity thus afforded, could not acquire rights of occupancy. (*Umanath Tewari* v. *Kunhan Tewari*, 19 W. R., 177.) An "Indigo Concern or firm" cannot acquire a right of occupancy, as it has no corporate or legal existence. A right of occupancy can only be recognized in particular individuals. (*Cannan* v. *Kailash Chandra Rai*, 25 W. R., 117.) A firm of capitalists taking an *ijara* lease from a zamindar, and transmitting their rights to the changing members of the firm, cannot acquire rights of occupancy. (*Rai Kamal Dasi* v. *Laidley*, I. L. R., 4 Calc., 957.) A raiyat cultivating *nijjote* land, belonging to a proprietor of an estate, acquired no right of occupancy, if the land was leased to him for a term of years, or year by year; but he did acquire a right of occupancy, if it was not so leased to him. (*Gaur Hari Sing* v. *Behari Raut*, 3 B. L. R., App., 138; 12 W. R., 278; *Bhagwan Bhagat* v. *Jay Mohan Rai*, 20 W. R., 308; *Ashraf* v. *Ram Kishor Ghosh*, 23 W. R., 288.) A raiyat setting up a title hostile to his landlord could not claim a right of occupancy, such an act amounting to a disclaimer and forfeiture of all his rights of occupancy. (*Nadir Beg* v. *Muddaram*, 2 W. R., Act X, 2; *Bissonath Rai* v. *Bhairab Sing*, 7 W. R., 145; *Ram Naffar Bhattacharji* v. *Dhol Gobind Thakur*, 1 C. L. R., 421; *Debi Misra* v. *Mangar Miah*, 2 C. L. R., 208; *Satyabhama Dasi* v. *Krishna Chandra Chattarji*, I. L. R., 6 Calc., 55; *Mozharuddin* v. *Gobind Chandra Nandi*, I. L. R., 6 Calc., 436; *Ishan Chandra Chattopadhya* v. *Shama Charn Datta*, 1 L. R., 10 Calc., 41.) A defendant whose pottah had been rejected, could still show that he had acquired a right of occupancy. (*Bydnath Saha* v. *Jadav Chandra Saha*, 3 W. R., 208.) Occupation as a joint raiyat could not be added to occupation as a sole raiyat to make up the period of twelve years. (*Mahomed Chaman* v. *Ram Prasad Bhagat*, 8 B. L. R., 338.) But it might be so added if the occupation, in its inception joint, became occupation as a sole raiyat owing to the death of co-sharers. (*Forbes* v. *Ram Lal Biswas*, 22 W. R., 51.) Occupation by a predecessor in title, other than a father or other person from whom a raiyat inherits, is not such an occupation as will create in the holder of land any right of occupancy

(*Lal Bahadur Singh* v. *Solano*, I. L. R., 10 Calc., 45 ; 12 C. L. R., 559 ; *Dinabandhu De* v. *Ramdhan Rai*, 9 W. R., 522 ; *Durga Sundari* v. *Brindaban Chandra Sirkar*, 11 W. R., 162 ; *Narendra Narain Rai* v. *Ishan Chandra Sen*, 22 W. R., 22 ; 13 B. L. R., 274 ; *Khirod Chandra Rai* v. *Gordon*, 23 W. R., 237), even with the consent of the landlord (*Tara Prasad Rai* v. *Surjo Kant Acharji*, 15 W. R., 152 ; *Haidar Baksh* v. *Bhubendro Deb Kunwar*, 17 W. R., 179 ; but see *contra*, *Haro Chandra Guho* v. *Dunn*, 5 W. R., Act X, 55), unless the tenant has a transferable interest (*Watson* v. *Sharat Sundari Debi*, 7 W. R., 395). The period during which the occupant of land was in possession as proprietor cannot be included in considering whether he has acquired a right of occupancy. Such a right must be acquired against somebody, and cannot be acquired by a man against himself. (*Lal Bahadur Singh* v. *Solano*, .1 L. R., 10 Calc., 45 ; 12 C. L. R., 559.) An ijaradar or farmer cannot acquire a right of occupancy, but a right of occupancy once acquired will not be lost by subsequently holding the land in farm. (*Gilmore* v. *Srimant Bhumik*, W. R., Sp. No., 1864, Act X, 77 ; *Watson & Co.* v. *Jagendro Narain Rai*, 1 W. R., 76 ; *Mokunda Lal Dhobi* v. *Crowdy*, 17 W. R., 274 ; 8 B. L. R., App., 95 ; *Savi* v. *Panchanan Rai*, 25 W. R., 503 ; *Ram Saran Sahu* v. *Veryag Mahtan*, 25 W. R., 554.) This is now expressly made law by sec. 22 (3) and the explanation thereto. No right of occupancy could be acquired in land exclusively occupied by buildings (*Mohar Ali Khan* v. *Ram Ratan Sen*, 21 W. R., 400 ; *Swarno Mayi* v. *Blumhardt*, 9 W. R., 552 ; *Addaito Charn De* v. *Peter Das*, 17 W. R., 383) ; or when the main object of the occupation is the dwelling-house, and when the cultivation of the soil, if any there be, is entirely subordinate thereto (*Kali Krishna Biswas* v. *Janki*, 8 W. R., 250 ; *Ramdhan Khan* v. *Haradhan Paramanik*, 12 W. R., 404.) No right of occupancy could be acquired in a jalkar. (*Uma Kant Sirkar* v. *Gopal Singh*, 2 W. R., Act X. 19 ; *Sham Narain Chaudhri.* v. *Rajah of Darbhangah*, 23 W. R., 432 ; *Jaggabandhu Saha* v. *Pramothonath Rai*, I. L. R., 4 Calc., 767.) A right of occupancy cannot be acquired in a tank used only for the preservation and rearing of fish, and not forming a part of any grant of land, or an appurtenance to any land. (*Sibu Jelya* v. *Gopal Chandra Chaudhri*, 19 W. R., 200.) A right of occupancy cannot be acquired in a tank with only so much land as is necessary for its banks. (*Nidhi Krishna Basu* v. *Ram Das Sen*, 20 W. R., 341.) In the case of *Hargobind Raha* v. *Ramratno De* (I. L. R., 4 Calc., 67), it has been suggested that no rights of occupancy accrue in lands held under a service tenure. (See also *Dinabandhu De* v. *Ramdhan Rai*, 9 W. R., 522.) This, however, is an *obiter dictum*. But whatever the incidents of such a tenure may be, they are not affected by the provisions of this Act (*vide* sec. 181). No rights of occupancy could be acquired in lands sublet for a term or year by year by a raiyat having a right of occupancy, or in lands held by a sub-lessee from a raiyat having a right of occupancy. (*Gilmore* v. *Sarbessari Dasi*, W. R., Sp. No., Act X, 72 ; *Jamiatunnissa Bibi* v. *Nur Mahomed*, *Ibid*, 77 ; *Ketal Gain* v. *Nadir Mistri*, 6 W. R., 168 ; *Abdul Jabar* v. *Kali Charn Datta*, 7 W. R., 81 ; *Kali Kishor Chatarji* v. *Ram Charn Shaha*, 9 W. R., 344 ; *Haran Chandra Pal* v. *Mukta Sundari*, 10 W. R., 113 ; 1 B. L. R., A. C., 81 ; *Ramdhan Khan* v. *Haradhan Paramanik*, 12 W. R., 404 ; *Nil Kamal Sen* v. *Danish Sheikh*, 15 W. R., 469 ; *Ishan Chandra Ghosh* v. *Harish Chandra Banarji*, 18 W. R., 19 ; *Annapurna Dasi* v. *Rudha Mohan Pattro*, 19 W. R., 95.)

Determination of occupancy-rights under the old law.—Occupancy-rights may be determined by quitting and abandoning the land, in which case there is nothing to prevent the zamindar from re-letting the land and settling it

with others (*Nadiar Chand Podar* v. *Madhu Sudan De*, 7 W. R., 153 ; *Haro Das* v. *Gobind Bhattacharji*, 3 B. L. R., App., 123 ; 12 W. R., 304 ; *Ram Chandra Rai* v. *Bholanath Lashkar*, 22 W. R., 200 ; *Narendra Narain Rai* v. *Ishan Chandra Sen*, 22 W. R., 22 ; 13 B. L. R., 274 ; *Ram Chang* v. *Gora Chand Chang*, 24 W. R., 344), even if the abandonment has been involuntary in consequence of transportation (*Doman* v. *Shubal Kulal*, 10 W. R., 253). The relinquishment need not be in writing. (*Manirudin* v. *Mahomed Ali*, 6 W. R., 67.) If a raiyat abandons his holding and ceases to pay rent for five years, he loses his rights of occupancy. (*Ghulam Ali Mandal* v. *Golap Sundari Dasi*, I. L. R., 8 Calc., 612.) A raiyat loses his right of occupancy, if he is dispossessed and fails for some years to pay rent. (*Hem Chandra Chawdhri* v. *Chand Akund*, I. L. R., 12 Calc., 115.) Where land held by tenants with rights of occupancy was completely submerged for a number of years, and during the period of such submersion no rent was paid by the tenants, it was held that the tenants had by non-payment of rent during the period of submersion forfeited their rights of occupancy. (*Hemnath Datta* v. *Ashgar Sirdar*, I. L. R., 4 Calc., 894.) The right of occupancy is a right given to a raiyat continuing only so long as he pays rent for the land he holds, and though it cannot be affected by a wrongful eviction, still, when the zamindar acquires the land by purchase and takes possession even *benami* in the name of a third party, seeing that he cannot pay rent to himself, the right is gone, and cannot be subsequently revived. (*Radha Gobind Koer* v. *Rakhal Das Mukharji*, I. L. R., 12 Calc., 82.) A raiyat, even if he fails to pay rent for five years, does not necessarily forfeit his right of occupancy, unless he abandons the land. (*Musyatulla* v. *Nurzahan*, I. L. R., 9 Calc., 808 ; *Brajendra Kumar Rai* v. *Bungo Chandra Mandal*, 12 C. L. R., 389 ; *Nilmani Dasi* v. *Sonatan Doshayi*, I. L. R., 15 Calc., 17.) If a raiyat is unlawfully evicted, the holding does not necessarily cease to exist. (*Lattifunnissa Bibi* v. *Pulin Behari Sen*, W. R., F. B., 91 ; *Mahomed Gazi Chaudhri* v. *Nur Mahomed*, 24 W. R., 324.) Where a person held raiyati lands alternately as cultivator and as *thika* lessee or farmer for a period of fifty years, it was held that his cultivation of the lands for broken periods would not deprive him of his right of occupancy, and that the doctrine of merger would not apply to such cases. (*Mokundo Lal Dhobi* v. *Crowdy*, 17 W. R., 274 ; 8 B. L. R., App., 95.) A raiyat with a right of occupancy does not lose his right by sub-letting the land. (*Kali Kishor Chattarji* v. *Ram Charn Saha*, 9 W. R., 344 ; *Haran Chandra Pal* v. *Mukta Sundari Chundhurani*, 10 W. R., 113 ; 1 B. L. R., A. C., 81 ; *Jamir Gazi* v. *Gonai Mandal*, 13 B. L. R., 278 note.) A right of occupancy is not lost by making an invalid transfer. (*Saddai Purira* v. *Baistab Purira*, 15 W. R., 261 ; 12 B. L. R., 84 note ; *Gorachand Mustafi* v. *Madan Mohan Sikdar*, 13 B. L. R., 279 note ; 11 W. R., 94 ; *Dwarkanath Misra* v. *Kanai Sirdar*, 16 W. R., 111.) A right of occupancy is not lost by subsequently taking the land in farm. (*Watson & Co.* v. *Jogendra Narain Rai*, 1. W. R., 76.)

Definition of "settled raiyat." Act X of 1859, s. 6 ; Act VIII of 1869, B.C., s. 6.

20. (1.) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

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(2.) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3.) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4.) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5.) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6.) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7.) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Acquisition of rights as a settled-raiyat.—This section makes a great change—perhaps the greatest change made by the Act—in the Rent-law hitherto current in Bengal. A raiyat no longer needs to hold the same particular land for twelve years in order to acquire a right of occupancy in it, as was formerly the case. (*Amar Chand Lahutta* v. *Bakshi Paikar*, 22 W. R., 228.) It is sufficient, if he has held as a raiyat any land in the same village for twelve years, either before or after the passing of the Act, and either himself or through the person whose heir he is. If he has done so, he then becomes "a settled raiyat." But this does not apply to *utbandi* raiyats, or to raiyats of *char* or *dearah* lands (see note to sec. 180 for an explanation of these terms), who must hold the same land for twelve years before they acquire occupancy-rights in it. Nor does it confer a right of occupancy on raiyats occupying proprietor's private or demesne lands, under leases for a term of years or from year to year. This provision, giving raiyats rights of occupancy, provided they have held any land in the village for twelve years, has been introduced to prevent zamindars from debarring their raiyats from acquiring rights of occupancy by shifting them, so as not to allow them to occupy the same land for the full period of twelve years. At one time it was proposed to allow a settled raiyat to acquire rights of occupancy in all

lands held by him in an estate, provided he had held any land for twelve years in that estate. But this proposal was finally, after much discussion, rejected.

Distinction between a settled raiyat and an occupancy-raiyat.—Sub-section (3) is important, as it makes a distinction—the only distinction made by the Act—between a "settled raiyat" and "an occupancy-raiyat," which terms might appear to be synonymous. But they are not synonymous. By this sub-section the status of a "settled raiyat" is made heritable, though not transferable, and a raiyat in the acquisition of such a status is entitled to the benefit of the occupation of the person whose heir he is. But the status of a settled raiyat, whether inchoate or complete, cannot be acquired by purchase or sale, as rights of occupancy can, in districts where such rights are, by custom, transferable. On the contrary, the purchaser of a raiyat's right cannot, on the acquisition of rights as a settled raiyat, benefit by the occupation of his predecessor, and the purchaser of an occupancy-raiyat's rights does not acquire rights of occupancy in lands other than those which he may have purchased,—that is to say, he does not by his purchase acquire rights of occupancy in other lands held by him, or which he may in future hold, in the same village. In this respect, the Act makes no change in the law. (See note to sec. 19.) But a settled raiyat at once acquires rights of occupancy in all lands held by him in the village, however he may acquire them, and for however short a period he may have held them (see sec. 21).

Co-sharer raiyats.—The co-sharers alluded to in sub-sec. (4) are not co-sharer landlords, or co-sharers in an undivided estate. They are co-sharer raiyats, and the meaning of the clause would appear to be that, when two raiyats hold land jointly, they shall each be considered to be a raiyat of the holding, and may each become a "settled raiyat" of the village in which it is situate. Consequently, when a raiyat has held land for twelve years jointly with other co-raiyats, or partly jointly and partly solely, he, nevertheless, has acquired the status of a settled raiyat in the land. In this respect, the sub-section follows the High Court ruling in the case of *Forbes* v. *Ram Lal Biswas* (22 W. R., 51), and sets aside that in the case of *Mahomed Chaman* v. *Ram Prasad Bhagat* (8 B. L. R., 338).

Retention and recovery of rights as a settled raiyat.—Section 87 provides for the recovery of possession by a raiyat on proof that he has not voluntarily abandoned his holding, in which case his rights as a settled raiyat are not affected by his dispossession. But if he has voluntarily abandoned his holding, and returns within a year and takes the same or another holding in the same village, he will, under sub-section (5), still be a settled raiyat of the village.

Onus of proof.—Sub-section (7) makes another great change in the law. It relieves the raiyat of the onus of proving his occupancy-rights. It throws on the landlord the onus of disproving the raiyat's claim to rights of occupancy. It has been inserted in the Act in consideration of the great practical difficulty experienced by raiyats in proving their occupancy-rights, owing to the general non-interchange of pottahs and kabuliyats under the previous law.

Settled raiyats to have occupancy-rights.

21. (1.) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of

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occupancy in all land for the time being held by him as a raiyat in that village.

(2.) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force ; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Retrospective effect of provisions of sub-section (2).—March 2nd, 1883, is the date on which the motion was made in the Legislative Council for leave to introduce the Bengal Tenancy Bill. The object of sub-sec. (2) is to protect raiyats who may have been induced, while this Act was passing through Council, to contract themselves out of its provisions. It is to be observed that this sub-section makes the provisions of sec. 20 retrospective from the 2nd March, 1883. They, therefore, take effect from the 2nd March, 1871. This sub-section applied to suits pending at the time the Act came into force, viz., 1st November, 1885, which had not then resulted in a decree. In a suit instituted on 8th October, 1885, to eject the defendants after notice to quit, it was held that, although the defendant had held the land from which it was sought to eject him for less than twelve years, and, therefore, would not, if Bengal Rent Act VIII of 1869 had been applicable, have acquired a right of occupancy, yet the effect of secs. 20 and 21 of the Bengal Tenancy Act was to give him a right of occupancy, and, therefore, he could not be ejected. (*Jogessar Das* v. *Aisani Kaibarto*, I. L. R., 14 Calc., 553.) This ruling was followed in the Full Bench case of *Tapsi Singh* v. *Ram Saran Koeri* (I. L. R., 15 Calc., 376), in which it was held that sec. 21, sub-sec. (2) of Act VIII of 1885, is expressly retrospective, and applied to suits pending at the date of the commencement of that Act.

An occupancy-raiyat cannot contract himself out of his status.—Under the provisions of sec. 178 (*post*) - (1) nothing in any contract between a landlord and a tenant made before or after the passing of this Act, shall (*a*) bar in perpetuity the acquisition of an occupancy-right in land, or (*b*) take away an occupancy-right in existence at the date of the contract; (2) nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880 (which is the date of the Government orders directing the publication of the Rent Law Commission's Report and Draft Bill), and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land ; and (3) nothing in any contract made between a landlord and a tenant after the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land. It would appear, however, that the object of these restrictions may, in certain cases, be defeated owing to the provision in sub-sec. (7) of sec. 20, under which, in a proceeding under this Act, a raiyat may admit that he has not for twelve years held any part of his land as a raiyat, and if he does so, the Court or Revenue-officer before whom he makes this admission would appear to be bound to accept it as correct. In

other words, the raiyat may admit he is not a settled-raiyat, and his admission must be accepted, even though it be contrary to the real facts of the case.

Effect of acquisition of occupancy-right by landlord.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession, or otherwise, the occupancy-right shall cease to exist ; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist ; but nothing in this sub-section shall prejudicially affect the right of any third person.

(3) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

Merger.—Sub-sections (1) and (2) introduce a rule of merger. The meaning of sub-section (1) is, that if a landlord buys or otherwise comes into possession of an occupancy-right, the right shall be *de facto* extinguished. The land, however, continues part of the raiyati stock of the country, and the under-raiyats in it, if any, become elevated to the status of raiyats. Sub-section (2) lays down the same rule in the case of an occupancy-right coming into the possession of a co-sharer-landlord or permanent tenure-holder. Though these provisions are new, they are in accordance with the previous rulings of the High Court on the subject. Thus, in *Lal Bahadur Singh* v. *Solano* (I. L. R., 10 Calc., 45 ; 12 C. L. R., 559), it was held that the period during which an occupant of land was in possession as proprietor cannot be included in considering whether he has acquired a right of occupancy, as such a right must be acquired against somebody, and cannot be acquired by a man against himself. In an unreported case, *Krishna Prasad Singh* v. *Radha Prasad Singh*, cited in the case of *Lal Bahadur Singh* v. *Solano*, it was said by Garth, C. J., that a man cannot occupy the double character of landlord and raiyat, or make a pretence of paying rent to himself for the purpose of acquiring an occupancy-right against other people. Finally, in the case of *Radha Govind Koer* v. *Rakhal Das Mukharji* (I. L. R., 12 Calc., 82), it was held that when a zamindar acquires the land of an occupancy-raiyat by purchase, and take possession, even *benami* in the name of a third party, seeing that he cannot pay rent to himself, the occupancy-right is gone, and cannot be revived.

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Ijaradars.—Sub-section (3) and the explanation to it embody the law laid down by the High Court in the cases of *Gilmore* v. *Srimant Bhumik* (W. R., Sp. No. 1864, Act X, 77); *Watson & Co.* v. *Jogendra Narain Rai* (1 W. R., 76); *Mokundo Lal Dhobi* v. *Crowdy* (8 B. L. R., App., 95, 17 W. R., 274); *Umanath Tewari* v. *Kundan Tewari* (19 W. R., 177); *Savi* v. *Panchanan Rai* (25 W. R., 503); *Ram Saran Sahu* v. *Veryag Mahtan* (25 W. R., 554); *Jardine, Skinner & Co.* v. *Surat Sundari Debi* (25 W. R., 347; 3 C. L. R., 140); *Rai Kamal Dasi* v. *Laidley* (I. L. R., 4 Calc., 957); and *Lal Bahadur Singh* v. *Solano* (I. L. R., 10 Calc., 45; 12 C. L. R., 559).

It is said to be a common practice in Behar for *thikadars* to sell the rights of the occupancy-raiyats of their ijárás in execution of decrees for rent, and themselves to purchase these rights at the sales. But under the provisions of sub-section (3) they acquire nothing by their purchase but a bare right of possession in the raiyats' lands. They acquire only the right to hold the lands as raiyats, and, on the expiry of their interests as *thikadars*, they will have no occupancy-rights in the lands purchased by them until the expiry of twelve years from the date of taking possession of such lands.

The effect of the provisions of this section appears to be that a proprietor, or joint-proprietor, or a permanent tenure-holder, or joint permanent tenure-holder, or an *ijárádár*, or farmer of rents, cannot acquire a right of occupancy; but a person who has a right of occupancy does not lose it by subsequently acquiring the rights of a proprietor or joint-proprietor, of a permanent tenure-holder, or joint permanent tenure-holder, or of an *ijárádár* with respect to the same land.

Incidents of Occupancy-right.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Rights of raiyat in respect of use of land.

Hitherto, a raiyat has been debarred from cutting trees (*Abdul Rahman* v. *Dataram Bashi*, W. R., Sp. No. 1864, 367) unless planted by himself (*Golak Rana* v. *Nobo Sundari Dasi*, 21 W. R., 344), or unless he holds a lease in perpetuity at a fixed rent, in which the lessor reserves no reversionary interest in the land or the trees growing on it (*Saroda Sundari Debi* v. *Ghani*, 10 W. R., 419). But he is entitled to the possession of trees growing on land leased to him, till the contrary be proved. (*Mahomed Ali* v. *Boloki Bhagat*, 24 W. R., 330.)* A raiyat has also been hitherto debarred from digging tanks (*Tarini Charn Basu* v. *Deb Narain Mistri*, 8 B. L. R., App., 69; *Monindra Chandra Sirkar* v. *Maniruddin Biswas*, 11 B. L. R., App., 40; *Kedarnath Nag* v. *Khetra Pal Shibratna*, 6 C. L. R., 569), erecting brick houses (*Sibdas Bandopadhya* v. *Bamandas Mukharji*, 8 B. L. R., 237; 15 W. R., 360; *Jagat Chandra Rai* v. *Ishan Chandra Banarji*, 24 W. R., 220; *Prasanna Kumari Debi* v. *Ratan Baipari*, I. L. R., 3 Calc., 694; *Lal Sahu* v. *Deo Narain Singh*, I. L. R., 3 Calc., 781; 2 C. L. R., 295; but see *contra*, *Nyamatulla Ostagar* v. *Govind Chandra Datta*, 6 W. R., Act X, 40), excavating earth for making bricks (*Kadambini Debi* v. *Nabin Chandra Adukh*, 2 W. R., 157; *Anand Kumar*

* See also All. H. C. Rep., 1870, 251, and I. L. R., 2 All., 896.

Mukharji v. *Bissonath Banarji*, 17 W. R., 416), and even, according to the North-Western Provinces High Court, from digging wells or planting trees on his land (*Kunja Behari Pátak* v. *Shiva Balak Singh*, 1 Agra, F. B., 119 ; *Jewa Ram* v. *Futteh Singh*, 1 Agra, F. B., 125 ; *Sheocharn* v. *Bassant Singh* and *Ram Jalban Singh* v. *Meheli*, 3 All. Rep., 282), without his landlord's consent. If, however, the tenant had a permanent and transferable interest in the land, he might build a well, or do anything that did not entirely destroy the land, so as to endanger the landlord's ground-rent (*Dhepat Singh* v. *Halal Khuri Chaudhri*, W. R., Sp. No., 279), and if the landlord had stood by and allowed the tenant to erect brick houses (*Beni Madhub Banarji* v. *Jai Krishna Mukharji*, 7 B. L. R., 152 ; 12 W. R., 495 ; *Braja Nath Kundu* v. *Stewart*, 8 B. L. R., App., 51 ; 16 W. R., 216 ; *Durga Prasad Misra* v. *Brindabun Sukal*, 7 B. L. R., 159), or acquiesced in the excavation of earth for brick-making (*Nicholl* v. *Tarini Charn Basu*, 23 W. R., 298), the Courts would not allow him to eject the tenant, at least without giving him compensation. In another case, in which the tenant had planted his jote with mango trees to the knowledge, but without the consent, of his landlord, who took no action in the matter for three years, it was held that the landlord was not entitled to a mandatory injunction for the removal of the mango trees. (*Naina Misra* v. *Rupikan*, I. L. R., 9 Calc., 609 ; 12 C. L. R., 300.) Now, however, by Chap. IX of the Act, the law is changed. A raiyat holding at fixed rates and an occupancy-raiyat may (sec. 76) dig a well, tank, water-channel, make an enclosure or other permanent improvement of land for agricultural purposes, and erect a suitable dwelling and out-offices, with or without his landlord's consent. A non-occupancy raiyat may (sec. 79) dig a well and construct a dwelling-house on his land, with or without his landlord's consent. But a tenant may not now, without his landlord's consent, dig earth from it for purposes of brick-making, or do anything else, which will permanently impair the value of the land and render it unfit for the purposes of cultivation. Further, a raiyat may cut down the trees on his land without his landlord's consent, unless there be a custom to the contrary in his district. The landlord's remedy in the case of a raiyat's materially impairing the value of the land would be a suit for damages, or for the restoration of the land to its former condition. He might also obtain an injunction against the raiyat, restraining him from doing further injury to the land. He cannot eject the raiyat on this ground. Nor can he eject the raiyat for cutting down the trees in contravention of a local custom. His remedy in this case would be a suit for damages, or an injunction. But the landlord may eject the raiyat, if he renders the land unfit for the purposes of the tenancy, though, before doing so, he will, under the provisions of sec. 155, have to serve on the raiyat a notice specifying the particular misuse complained of, and requiring him to remedy and pay compensation for the same. Under sec. 178, sub-sec. (3), cl. (*b*), an occupancy-raiyat cannot, after the passing of this Act, contract himself out of the provisions of this section.

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Meaning of "fair and equitable rates."—This expression "fair and equitable rates" is not defined either in this Act or in Act X of 1859, or in any other Act of the Indian Legislature. Its meaning may be gathered from sec. 27, read

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with secs. 30 and 38. The existing rent is, under sec. 27, to be presumed to be fair, until the contrary is proved. Proof of the contrary would be proof of the existence of the grounds of enhancement specified in secs. 30 to 34, or of the grounds of reduction mentioned in sec. 38. The presumption in favour of the existing rent being the fair and equitable rent may be rebutted by shewing, (*a*) that the average prices of staple food-crops have risen during the currency of the present rent, that the rent paid by the raiyat is below the prevailing rate, or that the productive powers of the land have increased by an improvement effected by the landlord, in which cases the existing rent must be enhanced in order to arrive at a "fair and equitable" rent; or (*b*) that there has been a fall in the average prices of staple food-crops during the currency of the present rent, or that the soil has become deteriorated by a deposit of sand or the like (sec. 38), in which latter cases the existing rent would have to be reduced in order to arrive at a fair and equitable rent, within the meaning of the Act. It would, therefore, appear that a "fair and equitable rent" under the Act, means, in the case of occupancy-raiyats, the existing rent, *plus* or *minus* a rise or fall, as the case may be, on the grounds specified above. It may be worth while to point out that, in practice, the "fair and equitable rent" under this Act must, in the vast majority of cases, ordinarily, be either the existing rent—be it ever so high—or that rent, together with an enhancement of it. It is known that prices have risen, and that their tendency is to rise further. Hence, on the ground of rise in prices, existing rents must be enhanced, and cannot be reduced, in order to arrive at fair rents. Again, the rents of occupancy-raiyats who are paying at less than prevailing rates can be enhanced to prevailing rates, while the rents of raiyats who are paying at more than prevailing rates cannot be reduced to those rates. On this ground, then, so far as existing rents are changed at all, in order to get at fair rents, the change must be in the direction of enhancement, and cannot be in the direction of reduction. There is no class of cases likely to arise in actual practice, in which an occupancy-raiyat's rent can be reduced, in settling fair and equitable rents, except the few cases in which the soil may have deteriorated by a deposit of sand or the like. The provisions of this section would, therefore, be likely to prove disastrous to the raiyat, were it not for the provisions of a subsequent section, viz., sec. 35, in which it is said that, "notwithstanding anything in the foregoing sections, the Court shall not, in any case, decree any enhancement which is, under the circumstances, unfair and inequitable." But see the note to that section. It may be added that the Rent Commission stated their idea of a fair and equitable rate of rent to be "such a share of the produce of the soil, as shall leave enough to the cultivator to enable him to carry on the cultivation, to live in reasonable comfort, and to participate, to a reasonable extent, in the progress and improving property of his native land." (Rent Law Commission Report, Vol. I., p. 24, § 46.)

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

This section must be read in connection with sec. 155, which provides that, before bringing a suit for ejectment against a tenant on either of the grounds specified in this section, the landlord must serve on the tenant a notice specifying the particular misuse or breach complained of, and giving the tenant the option of either remedying the misuse or breach, or paying reasonable compensation for the same. The tenant is only liable to ejectment, if he has failed within a reasonable time to comply with the terms of this notice. A raiyat cannot, therefore, be ejected for merely materially impairing the value of the land. The landlord's remedy, in this case, will be a suit for damages, or for the restoration of the land to its former condition, and he may also obtain an injunction against the tenant, restraining him from doing further injury to the land. He will also have these remedies against a tenant who has rendered the land unfit for the purposes of the tenancy or broken a condition of his lease, and may have recourse to them without serving a notice on the tenant, or suing for his ejectment. The provisions of this section cannot be evaded, for in sec. 178, sub-sec. (1), clause (*c*), it is provided that nothing in any contract between a landlord and a tenant made before or after the passing of this Act, shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

Danger of landlord's sleeping on his rights.—Even when an occupancy-raiyat has rendered himself liable to be ejected, it is dangerous for a landlord to sleep on his rights. Under the old law, the Courts have frequently refused the relief of ejectment to landlords who have done so, and have stood by and allowed tenants to invest labour and capital in the land without taking any action. (*Beni Madhab Banarji* v. *Jai Krishna Mukharji*, 7 B. L. R., 153; 12 W. R., 495; *Shib Das Banarji* v. *Baman Das Mukharji*, 8 B. L. R., 237; 15 W. R., 360; *Brajanath Kundu* v. *Stewart*, 8 B. L. R., App., 51; 16 W. R., 216; *Durga Prasad Misra* v. *Brindaban Sukal*, 7 B. L. R., 159; *Rani Rama* v. *Jan Mahomed*, 3 B. L. R., A. C., 18; *Nicholl* v. *Tarini Charn Basu*, 23 W. R., 298; *Kedar Nath Nag* v. *Khetra Pal Shibratna*, 6 C. L. R., 569; *Naina Misra* v. *Rupikan*, I. L. R., 9 Calc., 609; 12 C. L. R., 300.)

Protection from eviction under the old law.—Under the old law, too, the Courts have always protected the tenant from eviction or forfeiture of his tenancy, except when provided for in the conditions of his lease. Thus, in *Alam Chandra Shaha* v. *Moran & Co* (W. R., Sp. No., Act X, 31), it was said that, in strict law, a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm. But cases of forfeiture are not favoured, where no injury has resulted, or where a money-compensation is a sufficient remedy. Mere unpunctuality in the payment of rent is no ground of forfeiture. The zamindar, if endamaged by the unpunctuality, may sue for interest and conditional forfeiture; but he cannot demand, at once, the absolute forfeiture of the property. Then, in *Angar Singh* v. *Mohini Datta Singh* (2 W. R., Act X, 101), it was said that in the absence of a proviso in a lease that it shall be cancelled, or that the landlord shall have the right of re-entry on breach of any of the conditions of it, a breach of contract does not cancel the lease or give a right to eject.

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On the other hand, in *Ram Kumar Bharttacharji* v. *Ram Kumar Sen* (7 W. R., 132), it was held that where the Collector has to enquire into contracts between parties, he must enforce the contracts, and cannot, upon supposed considerations of equity, set aside that which the parties have deliberately agreed upon between themselves. Every breach of an agreement for a lease does not entail forfeiture of the lease; but where forfeiture is provided as the penalty for the breach of a particular clause, it may be enforced for such breach. (*Mahomed Faiz Chaudhri* v. *Shib Dulari Tewari*, 16 W. R., 103.) Where a tenant covenants not to excavate a tank, and agrees, if he does so, to be liable to eviction, and to pay the cost of filling in the tank, the landlord is entitled to sue for cancellation of the lease, or for damages, and is not bound to wait for the expiration of the lease; but he cannot be permitted to claim possession of a fractional portion of the lands covered by the lease. (*Bir Chandra Manik* v. *Hossein*, 17 W. R., 29.) There is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease. Where there is an obligation to do several successive acts, the obligation is broken, if any one of the acts is omitted when the time comes for its performance, and the lessor is not bound to wait until the expiration of the term of the lease, but may sue at once for liquidated damages or forfeiture. Receipt of rent would be evidence of a waiver of the forfeiture, only if accepted for a period subsequent to the forfeiture. (*Chandranath Misra* v. *Sirdar Khan*, 18 W. R., 218.)

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Heritability of occupancy-rights.—The provisions of this section set at rest the question of the heritability of occupancy-rights. It was generally assumed that occupancy-rights were heritable; but doubts on this point were expressed by Peacock, C. J., in the case of *Ajodhya Prasad* v. *Imam Bandi Begam* (7 W. R., 528), and the question seems never to have been decided.

Transferability or non-transferability of occupancy-rights.—It is to be noticed that the above sections, dealing with the incidents of occupancy-rights, omit all reference to the incident of their transferability or non-transferability. The omission is intentional. It was at first proposed to make all occupancy-rights transferable. Subsequently, it was proposed to make occupancy-rights in Bengal transferable, and to leave the transferability of occupancy-rights in Behar to be regulated by custom. Ultimately, it was determined to leave the question of the transferability of all occupancy-rights, whether in Bengal or Behar, to be settled by custom, as before, and the Act, therefore, omits all reference to the subject, leaving the matter to be regulated by sec. 183, which provides that "nothing in this Act shall affect any custom, usage, or customary right, not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions." The application of this section to the question of the transferability of occupancy-rights is specially pointed out by illustration 1, appended to sec. 183, which runs

thus: "A usage, under which a raiyat is entitled to sell his holding without the consent of his landlord, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act."

Occupancy-rights not transferable save by custom —That occupancy-rights are not necessarily, that is, save by custom, transferable, seems to have been laid down, for the first time, in the case of *Sriram Basu* v. *Bishonath Ghosh* (3 W. R., Act X, 3), which was at variance with a previous decision, *Taramani Dasi* v. *Biressar Mazumdar* (1 W. R., 86), in which it had been held that a right of occupancy was a transferable tenure. The question was, however, settled by the Full Bench ruling of *Ajodhya Prasad* v. *Imam Bandi Begum* (7 W. R., 528). This ruling has been followed ever since. (See *Durga Sundari* v. *Brindaban Chandra Sirkar*, 2 B. L. R., App., 37; 11 W. R., 162; *Nanku Rai* v. *Mahabir Prasad*, 11 W. R., 405; 3 B. L. R., App., 35; *Bati Singh* v. *Murat Singh*, 20 W. R., 478; 13 B. L. R., 284, note; *Narendro Narain Rai* v. *Ishan Chandra Sen*, 13 B. L. R., 274; 22 W. R., 22.) In order to make a right of occupancy transferable, it has been said, it must be shown, that it is so transferable according to the custom of that part of the country in which the tenure is situated. (*Anno Purna Dasi* v. *Umachurn Das*, 18 W. R., 55; *Sankarpati Thakurani* v. *Saifollah Khan*, 18 W. R., 507.) Further, the sale of a jote in execution of a decree does not prove it to be transferable, nor does the purchaser acquire a right of occupancy by his purchase, where the right is not dependent on custom, but is the mere creature of the Rent Law. (*Kripanath Chaki* v. *Doyal Chand Pal*, 22 W. R., 169.) Again, in a recent case (*Dwarkanath Misra* v. *Harish Chandra*, I. L. R., 4 Calc., 925) it has been held that, in the absence of clear and well-defined custom, the right of occupancy acquired by a cultivating raiyat under Sec. 6 of Bengal Act VIII of 1869 cannot be transferred either by a voluntary sale, or gift, or sale in execution of a decree.

Occupancy-rights transferable by custom.—That occupancy-rights are transferable in districts where the custom of their transferability exists, is now a well-established fact. There are numerous judicial rulings to this effect. One of the earliest of these, is the case of *Sriram Basu* v. *Bissonath Ghosh* (3 W. R., Act X, 3), in which it was laid down that the determination of the fact whether or not a tenure with right of occupancy is transferable depends on local custom. Again, in *Jai Krishna Mukharji* v. *Raj Krishna Mukharji* (1 W. R., 153), it is said that "in every district of Bengal, there is a different custom. In some parts the *khudkasht* tenants are allowed to sell without reference to their landlords; in other parts the practice has not been allowed, and the only method by which the question in each case can be decided is by reference to local custom." Then, in *Haro Mohan Mukharji* v. *Lalanmani Dasi* (1 W. R., 5) it was said, that "it is not essential that a raiyat should have a *mokarari jote* in order to dispose of his rights in a holding. There are various descriptions of tenures, other than *mokarari*, that can be sold, and are sold every day; the howalahs and neem howalahs of Backergunge, and the jotes of Rungpore, for example. Neither of these holdings, are properly speaking *mokarari*, but they are *maurasi* and contain hereditary rights, which are, and always have have been, considered transferable." In *Jagat Chandra Rai* v. *Ram Narain Bharttacharji* (1 W. R., 126), it was said that, "neem howalahs, and all such rights of occupancy, established by the ancient prescription and custom of the country, are transferable tenures." In *Chandra Kumar Rai* v. *Kadirmani Dasi* (7 W. R., 247), a custom, according to which rights of occupancy

in land, on which a brick house had been built, were transferable, was held to have been proved; and in *Beni Madhab Banarji* v. *Jai Krishna Mukharji* (7 B. L. R., 152; 12 W. R., 495), it was found that, according to the custom of the Hooghly District, a tenure granted for building-purposes is transferable. (See also *Durga Prasad Misra* v. *Brindaban Sukal*, 7 B. L. R, 159; 15 W. R., 274.) In a recent case (*Tirthanand Thakur* v. *Mati Lal Misra*, I. L. R., 3 Calc., 774), the High Court has pointed out that a portion of an occupancy-holding cannot be transferred. In this case it was found that occupancy-raiyats had, by custom, a right in a certain locality to transfer their rights generally, but not to sub-divide their holdings and to transfer different parts of them to different people, and it was held that the persons who took the different parts of the holdings could be treated as trespassers and ejected.

Prevalence of custom of transferability.—It has, however, been contended by some that occupancy-rights are much more generally transferable than these judicial rulings would seem to show. It is said that the custom of transferring them prevails, not merely in certain particular localities, but all over Bengal. In the Bengal Government Report of 1883 on the Bengal Tenancy Bill, Vol. I, p. 14, statistics were given as to the sales of occupancy-rights in Bengal in 1881-82. It was shown that there had been 32,633 such sales in that year, and it was said that in every district of Bengal and Behar, except Darjeeling, occupancy-rights were "more or less freely sold, as a matter of private agreement, without objection on the landlord's part." It was contended, however, that the sales, of which the Government of Bengal produced statistics, were dependent on the landlord's consent. Further enquiries were, therefore, made, and their results are embodied in the appendices to the Government of Bengal Report of 1884 on the Tenancy Bill. The result of them is, according to the Government Report of that year, Vol. I, p. 18, that "wherever, throughout these provinces, the custom of free sale is well established, there, occupancy-rights are bought and sold without interference on the part of the zamindar. The utmost extent to which interference proceeds, is the levy of a fee, when the purchaser's name is registered (which it often is not) in the landlord's *serishta*."

Proof of custom of transferability.—A most difficult point in connection with this question, however, remains, that is, how is the custom of the transferability of occupancy-rights in any particular locality to be proved to the satisfaction of a Court,—with how many years' proof of the existence of such a custom should the Court be satisfied, and would be justified in finding the custom to be well established? On this point, reference is invited to the notes to sec. 183, in which the subjects of custom, usage, and customary right, are discussed.

Onus of proof as to transferability of occupancy-rights.—The onus of proving the transferability of a raiyat's holding is upon the party who alleges it to be of a permanent and transferable nature. (*Kripamayi Devi* v. *Durga Gobinda Sirkar*, I. L. R., 15 Calc., 89.)

No registration of transfers of ordinary raiyati-holdings required.—When an ordinary raiyati-holding is transferable, it is not necessary that the transfer should be registered in the landlord's *serishta*. This was required by the old law only in the case of dependent talukdars and holders of permanent transferable interests in land intermediate between the zamindar and the cultivator (*Turamani Dasi* v. *Biressar Majumdar*, 1 W. R., 86; *Haro Mohan Mukharji* v. *Chintamoni Rai*, 2 W. R., Act X, 19; *Kara Lal Thakur* v. *Latchmipat Dugar*,

7 W. R., 15 ; *Uma Charn Sett* v. *Hari Prasad Misra*, 10 W. R, 101 ; *Jai Krishna Mukharji* v. *Durga Narain Nag*, 11 W. R., 348), and secs. 12 to 16 of the present Act are only applicable to permanent tenure-holders and to raiyats holding at fixed rates ; but when an occupancy-raiyat transfers his holding, he is bound, under sec. 73, to give notice of the transfer to his landlord in the manner prescribed by Rule 7, Chap. V of the Government Rules under this Act. (See Appendix I.)

Effect of the transfer of occupancy-rights, when not transferable by custom.—The transfer of a tenure not transferable by the custom of the country, gives the zamindar no right to take actual possession, so long as the rent is paid by the recorded tenant or his heirs, and not by a stranger. (*Jai Krishna Mukharji* v. *Raj Krishna Mukharji*, 5 W. R., 147.) If a raiyat not having a transferable tenure quits possession, makes over his interests and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land. When a purchaser takes possession of a non-transferable tenure, and interposes himself between the zamindar and the raiyats on the land, he thereby commits a wrong, and the zamindar may sue to declare that no interest is vested in such purchaser, or to restrain him from interfering with the collection of rent. (*Harihar Mukharji* v. *Jodunath Ghosh*, 7 W. R., 114.) Where a raiyat makes an invalid transfer to a third party, the landlord is entitled to look to the former tenant for the rent, and, as the parties revert to their former status, he is not entitled to *khas* possession. (*Saddai Purira* v. *Boistab Purira*, 12 B. L. R., 84, note ; 15 W. R., 261.) The mere transfer of a right of occupancy does not work as a forfeiture of the rights and interests of occupancy-raiyats in the lands. (*Gora Chand Mustafi* v. *Barada Prasad Mustafi*, 11 W. R., 94 ; 13 B. L. R., 279, note.) A mere right of occupancy derived from a person who had only such a right gives no title to the transferee against the zamindar. (*Durga Sundari* v. *Brindaban Chandra Sirkar*, 2 B. L. R., App., 37 ; 11 W. R., 162.) A tenant who alienates his tenure does not thereby subject it to forfeiture. (*Dwarkanath Misra* v. *Kanai Sirdar*, 16 W. R., 111.) When a transfer of an occupancy-right has been made, and the transferee is in possession, the zamindar has a right to evict him as a trespasser, and to claim damages to the extent of so much of his rents and profits as the trespasser prevented him from enjoying. (*Suhodra* v. *Smith*, 20 W. R., 139.) When an occupancy-raiyat sells his holding, his right of occupancy ceases ; it cannot protect the purchaser from ejectment. (*Narendro Narain Rai* v. *Ishan Chandra Sen*, 22 W. R., 22 ; 13 B. L. R., 274.) When a tenure is not transferable, and the transfer has not been consented to, or adopted by, the zamindar, the zamindar is entitled to treat the raiyat as a trespasser, and to evict him, even in the middle of the year. (*Haro Mohan Mukharji* v. *Chintamoni Rai*, 2 W. R., Act X, 19.) A right of occupancy under the Rent law not being transferable, tenants who have such a right, by quitting the land sever all connection between themselves and it ; and the landlord is entitled to re-enter. (*Ram Chandra Rai* v. *Bholanath Lashkar*, 22 W. R., 200.) A right of occupancy cannot be transferred either by voluntary sale or gift, or by a sale in execution of a decree ; and when the former occupant of the land remains in possession as tenant-at-will of the transferee, he as much abandons the right of occupancy as if he had abandoned the land. (*Dwarkanath Misra* v. *Harish Chandra*, I. L. R., 4 Calc., 925.) A raiyat having a right of occupancy is not liable to ejectment by his superior landlord, because he has asserted a transferable right in the lands, and sold that right to a stranger, without giving up possession of the land. (*Shrishtidhar Biswas* v. *Madan Sirdar*, I. L R., 9 Calc., 648.)

The rule to be deduced from the above rulings would seem to be that, when an occupancy-raiyat transfers his rights in the lands, which are not transferable by custom, and quits the land, and ceases to pay rent for it, the landlord can enter on it, or bring a suit for the ejectment of the transferee. But if the transferor continues to pay rent for the land, or continues to occupy the land as any kind of tenant, the landlord cannot re-enter on it, or eject the occupant. The ruling in the case of *Dwarkanath Misra* v. *Harish Chandra* may seem to conflict with these views; but they are in accordance with the decision in the case of *Srishtidhar Biswas* v. *Madan Sirdar*, I. L. R., 9 Calc., 648, which would seem to over-rule that in *Dwarkanath Misra* v. *Harish Chandra*.

Effect of the receipt of rent by the landlord from the transferee of a non-transferable right of occupancy.—It has been held that in certain circumstances the receipt of rent from the transferee of a non-transferable right of occupancy does not bind the landlord. In *Khudiram Chatarji* v. *Rukhini Boistabi* (15 W. R., 197), it was said that payment of rent *marfatwari* (*i. e.*, on behalf of another) confers no raiyati title on the *marfatwar*. Then, in *Bhajohari Banik* v. *Aka Ghulam Ali* (16 W. R., 97), it was said that the purchaser of a raiyati-tenure is bound to communicate with the zamindar, and obtain his consent to the transfer, and without this being done, a gomasta's receipts are not binding on the zamindar. In another case (*Gaurlal Sirkar* v. *Rameshwar Bhumik* (6 B. L. R., App. 92), it has been said that a zamindar does not, by the mere receipt of rent from a purchaser from a tenant having a right of occupancy, sanction the sale to the purchaser, so as to give him a right of occupancy. There are some cases, however, in which it has been ruled that the receipt of rent by the landlord from the transferee validates the transfer of a non-transferable occupancy-right. In the first of these, *Allender* v. *Dwarkanath Rai* (15 W. R., 320), it has been said that where rent is recovered, without objection, by successive landlords from the date of such transfer, such receipt acts as a full and complete acknowledgment by the proprietor that he accepts the new tenant in place of the old one. Again, in *Amin Baksh* v. *Bhairo Mandal* (22 W. R., 493), it has been laid down that the conduct and acts of a zamindar may be such as to take a case out of the purview of the Full Bench decision in *Narendro Narain Rai* v. *Ishan Chandra Sen* (13 B. L. R., 274; 22 W. R., 22) which declares that a right of occupancy is not transferable, *e. g.*, when a zamindar has clearly recognized a transfer, and done everything in his power in accepting the transferee as his tenant. In another case—in which, however, it does not appear whether the tenancy was a transferable tenure or a non-transferable right of occupancy—it was laid down that a landlord, by having allowed the sums paid into the Collectorate by a third party to be carried to his credit, had clearly recognized the transfer from the tenant to the third party. (*Ram Gobind Rai* v. *Dashu Ojha Debi*, 18 W. R., 195.)

When a non-transferable occupancy-right can be bequeathed.—The rights of permanent tenure-holders and of raiyats holding at fixed rates can be bequeathed as well as inherited (secs. 11 and 18). The Act makes an occupancy-right heritable (sec. 20 (3)), but contains no provision for its being bequeathed. Unless, then, the bequest of such a right is sanctioned by custom, no testamentary disposition of an occupancy-right will be valid. But the framers of the Act clearly held that customs both of transferring and bequeathing occupancy-rights may exist; for, in clause (d), sub-sec. (3), sec. 178 of this Act, it is provided that no

raiyat can, after the passing of this Act, contract himself out of his right to transfer or bequeath his holding in accordance with local usage.

Effect of transfer of occupancy-rights when transferable by custom.—When occupancy-rights are transferable by custom, it is clear that all that the raiyat has now to do, in order to make the transfer binding against the landlord, is to give him notice of the transfer (see sec. 73). Under the old law it has been held that if the landlord of a transferable holding receives rent from the transferee and is fully aware of the transfer, this is sufficient to put an end to the connection of the transferor with the holding. (*Abdul Aziz Khan* v. *Ahmad Ali*, I. L. R., 14 Calc., 795.)

Transfer of occupancy-rights how to be effected.—Under sec. 54, Act IV of 1882, (Transfer of Property Act), a sale of tangible immoveable property of the value of one hundred rupees and upwards, or of a reversion or other intangible thing, can be made only by registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by registered instrument or by delivery of the property. Hence, if a raiyat purports to sell his land, he must execute a registered deed of sale with regard to it, if it be worth Rs. 100 and upwards, and if it be worth less, he may execute such a deed of sale; but he may also effect a valid transfer by putting the purchaser in possession of it. If, however, he purports to sell his rights in the land, which are intangible, he must execute a registered deed of sale.

A raiyat cannot create an intermediate tenure between himself and his landlord.—It was said in *Harihar Mukharji* v. *Jadunath Ghosh* (7 W. R., 114), that "whatever may be the rights of a person to whom a tenant having a right of occupancy transfers his title with possession, we do not think that a tenant having a right of occupancy can create a tenure intermediate between himself and the talukdar."

Sub-letting.—This chapter is silent as to an occupancy-raiyat's right of sub-letting. This subject is, however, dealt with in sec. 85, on reference to which it will be seen that *any* raiyat may sublet his land: (*a*) if without the consent of his landlord, by means of a registered lease, which shall be valid for only nine years, whether registered before or after the passing of the Act; or (*b*) with the consent of his landlord, in any way he pleases, and for any term not exceeding the term of his own holding, if he holds it on a terminable lease.

Enhancement of Rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

A similar presumption arose under sec. 5, Act X of 1859, and VIII of 1869, B. C. (*Ishar Ghosh* v. *Hills*, W. R., Sp. No., F. B., 148; *Thakurani Dasi* v. *Bisheshar Mukharji*, 3 W. R., Act X, 29; B. L. R., F. B., 202.)

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Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

The effect of this section is, that enhancement, except by suit or by contract, is absolutely prohibited, and that if a money-rent is enhanced by contract, the contract must be written and registered, save as provided in proviso 1, sec. 29.

Enhancement of produce-rents.—From the omission of all reference in this, and in subsequent sections, to the enhancement of rent payable in kind, it would seem as if a rent payable in kind, or, in other words, as if the rent of a *bhaoli* holding, cannot be enhanced under this Act. This is no doubt the case. None of the provisions of this sub-chapter, except those of sec. 27, are applicable to rents payable in kind, so that a rent payable in kind or a *bhaoli* rent cannot be enhanced under this Act as long as it remains payable as such. But either a landlord or an occupancy-raiyat can always, under sec. 40, apply to have a rent payable in kind commuted into a money-rent, and if the commutation is allowed, the landlord can proceed to enhance the commuted money-rent in accordance with the Act. It would further seem that there is nothing to prevent the enhancement of a produce-rent otherwise than under this Act. The provisions of sec. 178 place no restriction on its enhancement by contract out of Court, and it has been ruled that the fact of a raiyat having paid rent in kind for a number of years is no bar to enhancement. (*Thakur Prasad* v. *Mohamed Bakir*, 8 W. R., 170.)

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions :—

(*a*) the contract must be in writing and registered ;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract :

Provided as follows:—

(i.) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii.) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of,

his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii.) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement by contract.—Agreements to enhance must be in writing, and must be registered, and the enhanced rent must not exceed the rent previously paid by more than twelve and a half per cent., but if, as in the case of proviso (i), a raiyat actually pays an enhanced rent for not less than three years, under an oral or written, but unregistered contract, he cannot say that he was unaware of the nature of the contract he was entering into. He is, therefore, to be held liable for the enhanced rent, subject, however, to the provisions of clause (*b*). Again, when a raiyat, as in the case of proviso (ii), agrees to pay an enhanced rent, in consideration of an improvement effected by his landlord, he is paying, not so much an enhanced rent, as interest on the capital invested by the landlord. He is, therefore, liable to pay at an enhanced rate even exceeding his former rent by more than twelve and a half per cent., but only so long as the improvement lasts and produces its estimated effect. Finally, proviso (iii) is intended to permit of the unrestricted enhancement of the rents of raiyats, who may have agreed to sow indigo or other special crops in consideration of their being allowed to hold at specially low rates. In connection with proviso (i), the case of *Barhanadi Hauladar* v. *Mohan Chandra Guha* (8 C. L. R., 511) may be cited. In this case an agreement to pay enhanced rent had been made by one of several co-tenants, and the enhanced rent had been paid for several years. It was, therefore, held that all the co-tenants were liable, as it was to be assumed that they knew of, and acquiesced in, the arrangement made by their co-sharer. Further, it should always be remembered that sec. 20, Act IX of 1880, B. C. (the Cess Act), provides that the holder of an estate or tenure cannot recover rent at a higher rate than that mentioned in his return under the Cess Act, unless he proves that the rent has been lawfully enhanced subsequently to the lodging of his return.

This section does not apply to settlements.—It may be observed that sec. 29 does not apply to proceedings under Chap. X of this Act, and that a Revenue Officer settling rents, under Chap. X, is not bound by its provisions, except that he is bound to give effect to the terms of any contract made by the parties in accordance with sec. 29, before they have come before him. But a Collector enhancing rents, not as a Revenue or Settlement Officer, but as a landlord, is bound by the provisions of this section.

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30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely) :—

Enhancement of rent by suit.
Act X of 1859, s. 17; Act VIII of 1869 (B.C.), s. 18.

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate ;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Notices of enhancement no longer required.—This section makes a great change in the law with regard to enhancement-suits. The provisions of sec. 13, Act X of 1859, and sec. 14, Act VIII of 1869 (B.C.), have been done away with, and the issue of a notice of enhancement is no longer a necessary preliminary to the enhancement of an occupancy-raiyat's rent, or indeed to the enhancement of the rent of any tenant. The reason for this change is that a very large percentage of enhancement cases under the old law failed, (1) because of absence of proof of the service of the notice of enhancement, and (2) because of defects in the form of notice, which merely delayed and impeded the decision of the real question at issue between the parties, and at the same time gave rise to much unnecessary litigation. Under the present law the institution of the enhancement-suit will be the notice of enhancement to the tenant. This will not bear hardly on the tenant, for, under sec. 154, a decree for enhancement, if passed in a suit instituted within the first eight months of the agricultural year, shall not ordinarily take effect till the commencement of the agricultural year next following; and, if passed in a suit instituted within the last four months of the agricultural year, shall not ordinarily take effect till the commencement of the agricultural year next but one following. But the Court may, for special reasons, fix a later date from which any such decree shall take effect.

Who may institute a suit for enhancement.—"Landlord" is defined in sec. 3, (4) as "a person immediately under whom a tenant holds." It has been held that an *ijaradar* is entitled to enhance the rent of raiyats holding under him, when there is no condition or stipulation in the lease precluding him from so doing (*Durga Prasad Mahanti* v. *Jai Narain Hazrah*, I. L. R., 2 Calc., 474); but a manager appointed under sec. 243 of Act VIII of 1859 merely to collect rents and other receipts and profits of land, and to carry on the existing state of affairs, as the proprietor himself had been doing, cannot do so (*Khetra Mohan Datta* v. *Wells*, I. L. R., 8 Calc., 719). One co-sharer cannot enhance the rent of his share,—such an enhancement being inconsistent with the continuance of the lease of the whole tenure. (*Ghani Mahomed* v. *Moran*, I. L. R., 4 Calc., 96; *Jogendra Chandra Ghosh* v. *Nobin Chandra Chattopadhya*, I. L. R., 8 Calc., 353; *Kashi Kishor Rai* v. *Alip Mandal*, I. L. R., 6 Calc., 149; *Kali Chandra Singh* v. *Raj Kishor Bhadro*, I. L. R., 11 Calc., 615; *Rash Behari Mukharji* v. *Sakhi Sundari Dasi*, I. L. R., 11 Calc., 614; but see *contra*, *Durga Prasad Mahanti* v. *Jai Narain Hazrah*, I. L. R., 2 Calc., 474); and the provisions of sec. 188 of this Act certainly preclude him from doing so now.

Clause (a). Prevailing rate.—The ground of enhancement specified in this clause is the same as the first ground mentioned in sec. 18, Act VIII of 1869, modified to the extent that "village" is substituted for "in the places adjacent," and that the words "and that there is no sufficent ground for his holding at so low a rate" have been added. As to the meaning of the term "prevailing rate," it has been held by the High Court that it means the rate generally prevalent, or paid by the *majority* of the raiyats in the same neighbourhood. "The evidence of twenty raiyats," it has been said, simply showing that they paid "their rents at a certain rate, does not go to prove the prevailing rate or the rate paid by the majority of the raiyats." (*Sadu Singh* v. *Ramanugraha Lal*, 9 W. R., 83. See also *Surahatunissa Khanam* v. *Gyani Baktaur*, 11 W. R., 142). Again, in the case of *Dhunraj Kunwar* v. *Ugar Narain Kunwar* (15 W. R., 2), it was said that the meaning of the term "prevailing rate" is the rate paid by so large a majority of the same class of tenants for adjacent lands with similar advantages, as would justify one in holding it to be the prevailing rate. The adoption of an average rate from the different rates given by several witnesses is an incorrect and unsafe mode of fixing the proper rate. (*Samira Khatun* v. *Gopal Lal Tagore*, 1 W. R., 58; *Roshan Bibi* v. *Chandra Madhab Kar*, 16 W. R., 177; *Audh Bihari Singh* v. *Dost Mahomed*, 22 W. R., 185; but see *contra*, *Dina Ghazi* v. *Mohini Mohan Das*, 21 W. R., 157.) In one case, *Priag Lal* v. *Brockman* (13 W. R., 346), the evidence of three patwaries, who put in their jamabandis, showing the rates paid by almost all the raiyats, was held sufficient to prove the prevailing rate. In *Tikaram Singh* v. *Sandes* (22 W. R., 335), where the Lower Appellate Court went on the principle that, although the plaintiff had not given evidence as to the rate of rent payable by tenants of the same class as defendants, holding adjacent lands of similar quality, yet he had given evidence as to such lands so occupied, of a somewhat better quality, and that the rate of rent allowed, regard being had to the difference, was proper to award in conformity with the spirit of the rent-law, the decision was held to be reasonable, and was accordingly affirmed.

The words "and that there is no sufficient reason for his holding at so low a rate" introduce a new element of consideration. A sufficient reason for the tenant's holding at a low rate may be, it is said, that he belongs to a superior caste, the members of which are, by custom, allowed to hold land at a lower

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rate than members of other castes, or that he or his ancestors originally reclaimed the land, and made it culturable by his own labour or at his own expense (*Nur Mahomed Mandal* v. *Hari Prasanna Rai*, W. R., Sp. No., 1864, Act X, 75; *Paramananda Sen* v. *Paddo Mani Dasi*, 9 W. R., 349; *Haro Prasad Rai* v. *Chandi Charan Bairagi*, I. L. R., 9 Calc., 505; 12 C. L. R., 251), or that the tenant is a village-headman, *mandal*, or *jeth-raiyat*, who, according to custom, is allowed to hold at less than the prevailing rates (see sec. 31, cl. (c.)).

Clause (b). Rise in prices.—This clause, it is to be observed, authorizes an enhancement of rent only on the ground of a rise in the average prices (see *Thakurani Dasi* v. *Bissesar Mukharji*, 3 W. R., Act X, 142; *Bhagrath Das* v. *Mohasup Rai*, 6 W. R., Act X, 34) of the staple food-crops, irrespective of the particular crops—such as jute, indigo, opium, and *ganja*—grown by the raiyat. The raiyat can grow what crop suits him best, without thereby subjecting himself to pay enhanced rent. A rise in prices can be more easily proved than a rise in the value of the produce, which, under the old rule, it was necessary to prove. As to the kind of evidence, which was considered relevant to prove the increased value of produce, see *Haro Prasad Rai* v. *Umatara Debi* (I. L. R., 7 Calc., 263; 8 C. L. R., 419). Under this Act (sec. 39) Government is bound to prepare price-lists of the staple food-crops, which are made presumptive evidence of the correctness of the prices mentioned in them.

Clause (c). Increase in productive powers of lands.—By sec. 18, Act VIII of 1869 (B. C.), the raiyat's rent was enhanceable on the ground that the productive powers of the land had been increased otherwise than by the agency, or at the expense, of the raiyat. The terms of this clause show that a raiyat's rent is no longer enhanceable on the ground of an increase in the productiveness of the soil, due to natural agency other than fluvial action. This ground of enhancement is said to have been given up, owing to the difficulty found in proving such an increase. (But see *Abhoy Chandra Sirdar* v. *Radha Ballabh Sen*, 1 C. L. R., 549, and *Churaman Singh* v. *Dunraj Rai*, I. L. R., 5 Calc., 56.) The alteration made in favour of the raiyat would, however, seem to be more apparent than real, for it is not easy to see how the productive powers of the land can have increased otherwise than by fluvial action, except by the labour, or at the expense of the raiyat or landlord. Provision is hereafter made (Chap. IX) for the making, registering, and recording evidence of improvements made by the landlord.

Clause (d). Fluvial action.—This clause provides for the enhancement of rent in alluvial tracts, which are fertilized by alluvial deposits brought down by the great rivers which water Bengal. It is not by this clause intended, it is said in the Government of Bengal Report of 1884 on the Tenancy Bill (Vol. I, p. 24), to "justify claims for enhancement over such areas as are not riparian or alluvial, but still are inundated in years of heavy rainfall, when rivers overflow their channels, or burst through their embankments."

A tenant is also liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, but this is strictly not an enhancement of rent. The matter is, therefore, dealt with in a subsequent section (sec. 52).

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement, unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court ;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure* by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code ;

*Act XIV of 1882.

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate ; and whenever it is found that, by local custom, any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom ;

(*d*) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

Clause (a). Effect of expression "have regard to."—As regards the expression "*have regard to,*" used in this and other sections, the Hon'ble Mr. Evans remarked, in the course of the debates on the Bill, "that every lawyer knows that if, into a definition of the ground on which an enhancement is to take place, you incorporate a number of things, which the Courts may have regard to, you make those things so positively a part of the definition, that, in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground." "I fear," he adds, "it will be exceedingly difficult for a Court to conduct an investigation in this way, and that there will hardly be a case, which will not be capable of being upset on appeal to the High Court." (*Government of India Gazette*, 1885, p. 523.)

Clause (a). Working of rules for ascertaining prevailing rate.—It is difficult to predict how the rules laid down in this section will work. According to some authorities the effect of the direction given to the Courts in clause (*a*), "to have regard to the rates generally paid during a period of not less than three years before the institution of the suit," will be that the Courts will ascertain the prevailing rate by taking an average of the existing rates—a principle which was said, in the case of *Samira Khatun* v. *Gopal Lal Thakur* (1 W. R., 58),

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to be incorrect and unsafe, and in *Audh Behari Singh* v. *Dost Mahomed* (22 W. R., 185), to be a wrong mode of fixing the proper rate; and which, it is further said, if once introduced, will have the effect of levelling all rates up to the maximum. According to others, the rulings of the High Court which prohibit the striking of an average, except in special cases, apply under this Act as well as under the old law. If the prevailing rate is not to be an average of the rates actually paid, it would appear to be the rate paid by a majority of the raiyats for the same class of land under the old law, or if not this, it is not easy to say exactly what it is. The Hon'ble Mr. Evans, in the course of the debates on this section, illustrated the manner in which he conceived the section will work as follows: "Say, there are two rates, one of Rs. 5 and one of Rs. 2. Merely to strike an average will not be in compliance either with this Act or the old law. But the class of judgments, which I have more than once referred to, in which the Judge says: 'This man has been holding at Re. 1. The claim is to have his rent enhanced up to Rs. 2, on the ground of prevailing rate; and there is a great deal of contradictory evidence as to what the prevailing rate is. I doubt the evidence which makes it Rs. 2; but I find, except in isolated cases, land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the prevailing rate is not less than Re. 1-8.' That is the sort of way in which the Courts have frequently given judgments in regard to these discrepant matters, and, I think, rightly so."

Clause (b). Government Notification regarding rank of Commissioner.—In the *Calcutta Gazette* of November 4th, 1885, p. 988, is published the following notification, with reference to the provisions of cl. (*b*) of this section:—

"Under sec. 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act.

"Whenever, under secs. 31 (*b*) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chap. XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the district may, from time to time, select for the purpose.

"The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above to conduct the enquiry, and the commission shall be issued to the person so nominated."

Fees payable on commissions.—The fees payable on such commissions are prescribed by the High Court Rules, Chap. IV, rule 8 (published in the *Calcutta Gazette* of the 6th February, 1878). They are as follow:—"When the commission is issued by the High Court, a Court-fee of Rs. 3 is payable on the commission, and such sum as the Court may direct is payable as remuneration to the Commissioner; when issued by a District or Subordinate Judge, a Court-fee of Rs. 2 is payable on the commission, and the Commissioner is to be paid at the rate of Rs. 3 *per diem*; when issued by a Munsif or Small Cause Court, a Court-fee of Re. 1 is payable on the commission, and a fee of Rs. 3 *per diem* is payable to the Commissioner." No higher fees than these are payable on commissions issued under sec. 31 (*b*) of the Tenancy Act.

Clause (c). Consideration of caste and custom in determining rate of rent.—The provisions of cl. (*c*) are based on those of sec. 20 of the North-Western Provinces Tenancy Act (Act XII of 1881). The custom alluded to in this clause must be a local custom, and not a mere family custom. Thus, a mere family

custom by which the relations of the zamindar hold at favourable rates could not be taken into consideration (*Bholu* v. *Zorawar*, L. R., 2 R. & R., 72; see Reynolds's N.-W. Provinces Rent Act, p. 35); but when it is the local custom to allow a particular class of raiyats—such as the *mandals* of Bengal, or *jeth* raiyats of Behar—to hold at favoured rates, it would appear from this clause that their rents must be determined in accordance with that custom.

As to the meaning of the term "custom," see note to sec. 183.

Clause (d). Enhancement on ground of landlord's improvement.—The provisions of cl. (*d*) are manifestly just, as an enhancement authorized on account of a landlord's improvement is to be regarded in the light of interest on capital expended, and should, consequently, not be taken into consideration in ascertaining the rate of rent prevailing for lands in which no such improvement has been effected.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if, in the opinion of the Court, it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

Clause (a). What decennial periods may be taken for comparison.—Sir Steuart Bayley, in introducing the Tenancy Bill into Council, with reference to this section, said: "Formerly it was necessary for the landlord to prove when the rent was last fixed, in order to enter it into a comparison at all. But now, the Court may take any period *during the currency of the rent* that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods." (*Government of India Gazette*, March 14th, 1885, p. 51.) It is, however, an open question whether the Court is bound to take two decennial periods "*during the currency of the rent*" for comparison, or whether it can take for the purpose a decennial period anterior to the currency of the present rent. If

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for example, the present rent was fixed ten years ago, and an enhancement is claimed on the ground that prices have risen during the past ten years, can the Court compare prices in the last decennial period with the prices in the previous decennial period, 1869 to 1879? If the answer be in the negative, that is to say, if the comparison can be made only between decennial periods within the currency of the present rent, then, there will not ordinarily be sufficient time for comparison, except where the present rents have been current twenty years or more. But if the Court may, in its discretion, take any anterior decennial period, into consideration and institute a comparison between the prices in the last decennial period and the prices in any former decennial period, what is it to do in case it finds the rise in rents has outrun the rise in prices? May the Court, for example, in its discretion, take the prices prevailing in the decennial period 1830-40 for purposes of comparison with the period 1879-89, and if it find that prices have risen since the period 1830-40 by 70 per cent., while rents have risen 500 per cent., may it refuse to decree any further enhancement of rent till the rise in prices becomes proportional to the rise in rents, which has already taken place? If the Court may do this, it would appear equitable, in the case supposed (which is said to be the actual case in parts of Behar), that the Courts should exercise the power, which would mean "no further enhancement for a century in such parts"; but if the Courts cannot take a decennial period anterior to the currency of the present rent, how are they to have two decennial periods in fifteen years, on the expiration of which term occupancy-raiyats' rents can ordinarily be enhanced? In order to justify an enhancement on the ground of rise in prices, there must, under sec. 30, be an increase in average prices during the currency of the present rent; but the question is, as compared with the average prices of what other period must this rise have taken place? In order to facilitate comparison, the Local Government may draw up (see sec. 39) statements of past prices, publish them for criticism, and finally, after revision, publish statements of annual average prices, which the Courts will receive as presumptive evidence (cl. 6). It is understood, however, that the Local Government has determined not to do so at present for want of necessary data.

Clause (b) Proportion to be borne by enhanced rent to previous rent.—In cl. (*b*) the rule laid down by the majority of the Judges in the well-known rent-case of *Thakurani Dasi v. Bisheshor Mukharji* (B. L. R., F. B., 202; 3 W. R., Act X, 29) is followed. The reduction prescribed in the latter part of cl. (*b*) is to allow for costs of production, which, it is said, have increased in a greater ratio than the prices of staple food-crops.

Rules as to enhancement on ground of landlord's improvement.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement, the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce, the estimated effect.

The registration of landlords' improvements is provided for by sec. 80. The improvement cannot, under sec. 80, be registered until it is made. A decree for enhancement cannot, therefore, be passed until the work is completed. This, however, does not apply to a contract for enhancement made out of Court, but the enhanced rent settled by contract out of Court cannot be realised, unless the enhancement exists and substantially produces the estimated effect (sec. 29, proviso ii).

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual ;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

The rule embodied in clause (*a*) had already been laid down by the High Court under the old Acts in the cases of *Krishna Mohan Patro* v. *Hari Sankar Mukharji* (7 W. R., 235), and *Abdul Ghani* v. *Bhattu Sheikh* (22 W. R., 350).

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not, in any case, decree any enhancement which is under the circumstances of the case unfair or inequitable.

As pointed out in the note to sec. 24, it is not clear what is meant in this section by an unfair and inequitable enhancement. If it means any enhancement which the Court considers unfair and inequitable, the question arises, by what standard is the Court to judge what is fair and equitable? If "fair and equitable" means fair and equitable as indicated in this Act, then the existing rent must be held to have been fair when it was fixed, and it must be enhanced if prices have risen since it was fixed. If the fairness is to be determined by any other

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standard, the question arises, what is that standard? If, for example, a Revenue-officer finds that the existing rent is so high that a raiyat who pays it cannot live and prosper, or that it does not leave the ordinary profits of capital to the cultivator, would he or the Court, be justified in refusing to enhance such rents on any ground whatever, though prices may have risen during the currency of the tenancy, or though the rate is below the prevailing rate? Probably it is meant that the answer to the last question should be in the affirmative, and, if so, the Courts may, under this section, refuse enhancements wherever rents are already excessive, notwithstanding a rise in prices during the currency of the present rent, or that the rates in individual cases may be below the prevaling rates.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Limitation of right to bring successive enhancement-suits.

37. (1) A suit instituted for the enhancement of the rent of a holding, on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act, or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

XIV of 1882.

The 2nd March, 1883, is, as already pointed out, the date on which leave to introduce the Bengal Tenancy Bill into Council was obtained. Sub-section (1) is meant to protect raiyats who, after this date and before the passing of this Act, (after which time their rents, of course, cannot be enhanced otherwise than in accordance with its provisions), have been induced to enter into contracts for the enhancement of their rent.

Section 373 of the Civil Procedure Code provides for a Court allowing a plaintiff to withdraw his suit or abandon part of his claim, with liberty to bring a fresh suit, on account of (*a*) some formal defect, or (*b*) other sufficient grounds, in which case the Court may pass such order as to costs as it thinks fit. A plaintiff cannot bring a fresh suit, if he withdraws his suit or abandons part of his claim without the permission of the Court, or, if, being one of several plaintiffs, he does so without the consent of the others.

Reduction of Rent.

Reduction of rent. Sec. 18 Act X, 1859, sec. 19 Act VIII 1869, B. C.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely) :—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

A tenant cannot contract himself out of the provisions of this section. (Sec. 178, sub-sec. (3), cl. (*f*).)

An instance of a tenant having been held entitled to an abatement of rent under the old law on the ground of part of his land having been covered with sand, will be found reported at W. R., Sp. No., 1864, Act X, 42 (*Inayatullah* v. *Ilahi Bakah*). The grounds on which the raiyat could claim an abatement of rent must have resulted from causes beyond his control. (*Mansur Ali* v. *Harvey*, 11 W. R., 291.)

Occupancy-raiyats cannot sue for abatement of rent on any ground not mentioned in the section.—It is to be noted that by the insertion of the words "*and*, ... *not otherwise*" in this section, the legislature expressly precludes the occupancy-raiyat from applying for an abatement on the ground that his rent is above the "prevailing rate," or on any other ground not mentioned in this section. It would, therefore, appear that if an occupancy-raiyat is *de facto* paying a rent so exorbitant as to leave no profit at all on his capital and no return for his labour, still the Court or a Revenue-officer, in proceeding under Chap. X, must presume that the rent is fair, and cannot reduce it, unless prices have fallen during the currency of the tenancy or the soil has deteriorated by a

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deposit of sand. The old law was, however, to the same effect—see the case of *Baban Mandal* v. *Shib Kumari Barmani* (21 W. R., 404), in which it was held, that a raiyat could not sue for abatement of rent simply because the lands he held were rated higher than those of the same description with similar advantages held by raiyats of the same class in the vicinity. It was decided under the old law that a landlord receiving a remission of his revenue from Government on condition that he would similarly reduce his raiyats' rents could be compelled to allow them an abatement of their rents. (*Baikantha Paraki* v. *Surendro Nath Rai*, 1 W. R., 84; *Golak Chandra Mahanti* v. *Parbati Charan Das*, 15 W. R., 168.) But no such abatement could now be claimed under the provisions of this section. An abatement of rent cannot be applied for even on the ground of fraud. The person injured by fraud may apply to be relieved of his contract; but he cannot apply under this section for an abatement of rent. (*Sukur Ali* v. *Amala Ahalya*, 8 W. R., 504.)

Whether reduction of rent can be claimed in a suit for arrears of rent.—Under the old law, a raiyat who was entitled to an abatement of rent could wait till sued for arrears of rent, and could then raise a plea of abatement by way of a set-off; and it was competent to the court to adjudicate on this plea (*Afsarudin* v. *Sharashi Bala Debi*, Marsh, 558; *Din Dyal Lal* v. *Thakru Kunwar*, 6 W. R., Act X, 24; *Gaur Kishor Chandra* v. *Bonomali Chaudhri*, 22 W. R., 117); but it is doubtful whether he can do so now. Section 19, Act VIII of 1869 (B. C.), provided that a raiyat having a right of occupancy was "entitled to claim" an abatement of rent on certain grounds, while sec. 38 of the present Act says that he "may institute a suit" for the reduction of his rent on the grounds specified therein. Further, the provisions of sec. 111, C. P. C, allow only of an ascertained sum being set-off against the plaintiff's claim in a suit for the recovery of money; but they do not take away from parties any right to set-off, legal or equitable, which they would have independently of that Code. (*Bhagbat Panda* v. *Bamdeb Panda*, I. L. R., 11 Calc. 557.

Price-lists.

Price-lists of staple food-crops.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish

it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled, from the periodical lists prepared under this section, lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

The Local Government has determined, for the present, not to prepare price-lists relating to past times, owing to the absence of necessary data. Rules have been framed by the Local Government, under this section, for the preparation of price-lists relating to present and future times. They will be found in Chap. II of the Government Rules under this Act, which, with Board of Revenue's instructions regarding them, are printed in Appendix I.

Commutation.

Commutation of rent payable in kind.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in

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another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity ;

(*b*) the average value of the rent actually received by the landlord during the preceeding ten years or during any shorter period for which evidence may be available ; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

This section is intended to provide for the commutation of rent payable under the *bhaoli* system, which prevails extensively in the South Gangetic Districts of Behar.

Under cl. (*g*), sub-sec. (3), sec. 178, no raiyat can now contract himself out of the provisions of this section.

Procedure when the application is opposed.—Sub-sec. (6) provides for the case when the application is opposed on the ground that the opposite party is unwilling to have the produce-rent commuted. It gives the officer to whom the application is made power to grant or refuse the application as he thinks

reasonable. But no provision is made for the case when the application is opposed on the ground that the rent is not payable in kind, but is a money-rent payable at a rate already fixed. It is, therefore, an open question what course the officer to whom the application is made should adopt in these circumstances,—whether he should decide the question himself, or refer the parties to the Civil Court. The Board of Revenue, on a reference being made to them as to the course to be adopted on a similar objection being raised to the valuation of produce under sec. 69 of this Act have expressed an opinion "that a mere unsupported denial by one of the parties that the land is held *bhaoli* does not bar the Collector's jurisdiction; but when there is a *bonâ fide* dispute whether rent is or is not taken by appraisement or division of the produce, the Collector has no power to make an order under sec. 69 of the Tenancy Act." (Board of Revenue's No. 662A of the 30th June, 1888 to the Government of Bengal.) Probably the officer to whom an application, under sec. 40, is made, had better, in the case above alluded to, be guided by this opinion of the Board's.

Changes made by the Act in the position of occupancy-raiyats.—Before leaving this subject of occupancy-raiyats, it will be useful to note the changes made by the Act in the position of a tenant of this class. They may be briefly summarized as follows:—(1) Instead of, as formerly, having to prove that he has held every particular field for more than twelve years, an occupancy-raiyat has now (sec. 20, cl. 1) only to have held any land in the *village* for twelve years, and he at once acquires rights of occupancy in all the lands held by him in that village; and in any proceeding between himself and his landlord, it is presumed (sec. 20, cl. 7), in the absence of proof to the contrary, that he is an occupancy-raiyat of the land which he is found to be holding. (2) He cannot now—sec. 178, cl. (3) (*a*)—contract himself out of his occupancy status, though he may admit that he is a non-occupancy raiyat, and the Courts may act on his admission—sec. 20 (7). (3) His rent can only (secs. 29 and 30) be enhanced by a Court, or by written and registered agreement. If enhanced by contract, the enhanced rent cannot, except in one specified case, (proviso;) exceed by more than two annas in the rupee the rent previously paid by the raiyat, and if once enhanced, whether by suit or by contract, it cannot (sec. 29, cl. (*c*), and sec. 37) be enhanced again for fifteen years. (4) The raiyat has now (sec. 77) power to make improvements, and can (sec. 82) recover compensation for his improvements in case of eviction. (5) Three months must (sec. 147) intervene between the institution of successive suits for arrears of rent. (6) An occupancy-raiyat (sec. 65) cannot now be evicted in execution of a decree for arrears of rent; but the holder of a decree for arrears of rent may bring the tenancy to sale. (7) The provisions of the law regarding distraint (Chap. XII) have been made less open to abuse. Against all this, must be set the facts, that the enhancement of his rent has been greatly facilitated; and that in no case which is ordinarily likely to arise can he obtain a reduction of his rent, though his existing rent be ever so high.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

This chapter must be read in connection with sec. 116, which provides that nothing in this chapter shall apply to a proprietor's private lands, where any

such land is held under a lease for a term of years, or under a lease from year to year. This chapter is also subject to the provisions of sec. 180 (2), which excludes raiyats holding under the custom of *utbandi* (see note to secs. 20 and 180 for an explanation of this term) from the provisions of the chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Application of chapter.

From the sequel it will be seen that the term "tenants-at-will," which has hitherto been popularly applied to non-occupancy-raiyats, is now no longer applicable to them; and, indeed, according to some authorities, the term never was applicable to any class of raiyats in Bengal.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Initial rent of non-occupancy-raiyat.

The contract between a non-occupancy-raiyat and his landlord may be an oral or a written one. If it be a written one, it must be registered, if it be from year to year, or for any term exceeding one year, or reserving a yearly rent. In one respect a non-occupancy-raiyat holding under an oral or written but unregistered lease (for example, a lease for a term not exceeding one year, the registration of which is optional) would seem to be in a better position than a raiyat of the same class holding under a written and registered lease, as he would seem not to be liable to be ejected on the expiry of its term. (See sec. 44, cl. (*c*).)

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Conditions of enhancement of rent.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

There is nothing to prevent the rent of a non-occupancy-raiyat being enhanced so as to exceed by more than two annas in the rupee the rent previously paid by him, and it can be enhanced not merely after the expiry of fifteen years from the last enhancement, as in the case of occupancy-raiyats, but after the expiry of five years. After this period he can be ejected, or his rent can, if the Court thinks fit, be enhanced again, unless he has, in the meantime, acquired the rights of an occupancy-raiyat.

Grounds on which non-occupancy-raiyat may be ejected.
Act X, 1859, s. 21; Act VIII, 1869 (B. C.), s 22.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, (namely) :—

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Clause (a).—Section 65 protects a tenure-holder, a raiyat holding at fixed rates, and an occupancy-raiyat, but not a non-occupancy-raiyat, from ejectment for arrears of rent. But a non-occupancy-raiyat cannot be ejected except in execution of a decree (sec. 89), and under the provisions of sec. 66, he can always save himself from ejectment, even after the passing of a decree against him, by paying in the amount of the decree with costs, within fifteen days from the date of the decree, or within such further period of grace as the Court may allow him.

Clause (b).—Under sec. 155, a non-occupancy-raiyat, before he can be ejected on either of the above specified grounds, is entitled, just as much as an occupancy-raiyat, to a notice specifying the misuse or breach complained of, and requiring him to remedy the same where possible, and in any case to pay reasonable compensation for the misuse or breach of condition of his lease.

Clause (c).—From the words "and not otherwise" in sec. 44, it appears that, unless a non-occupancy-raiyat's initial lease is written and registered, he cannot be ejected on the expiry of its term merely on the ground of its expiry. In other words, a non-occupancy-raiyat, if admitted to the occupation of any land on a verbal, or on a written but not registered, lease, cannot be ejected on its expiry, except on the grounds specified in cls. (*a*), (*b*), and (*d*) of this section.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on

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the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

This notice would seem only to be required in the cases referred to in cl. (*c*), sec. 44, and cl. (*b*) (7), sec. 46. No notice to quit can be issued to a non-occupancy-raiyat holding under an oral, or written but unregistered lease, for he is not liable to be ejected on the ground of expiration of the term of his lease.

If a suit for ejectment be instituted against a raiyat whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, without the notice to quit having been given, it must be dismissed. (*Rajendra Nath Mukhopadhya* v. *Bassidar Rahman Khundkar*, I. L. R., 2 Calc., 146 ; 25 W. R. 329.)

Rule 2, Chap. V of the Government rules under the Tenancy Act (see Appendix I) provides that a notice to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, and shall be subject to the same process fee.

Former law as to notices to quit —Under the former law, a non-occupancy-raiyat was entitled to a reasonable notice to quit. (*Bakranath Mandal* v. *Binodram Sen*, 1 B. L. R., F. B., 25 ; 10, W. R., F. B., 33 ; *Banwari Lal Rai* v. *Mohima Chandra Kunal*, 4 B. L. R., app. 86 ; 13 W. R., 267 ; *Nabo Kumar Ghosh* v. *Uzir Shikdar*, 23 W. R., 238 ; *Betts* v. *Jamai Sheikh*, 23 W. R., 271 ; *Abdul Karim* v. *Amar Chand Lahata*, 24 W. R. 461.) If he continued in occupation of the land after receipt of this notice to quit, he was taken to have agreed by implication to the rent demanded from him by the landlord. (*Janu Mandar* v. *Brojo Singh*, 22 W. R., 548). A tenant-at-will or from year to year is liable to be ejected upon a reasonable notice to quit, unless some local custom to the contrary is proved. (*Prasanna Kumari Debi* v. *Ratan Baipari*, I. L. R., 3 Calc., 696.) A raiyat holding on after the expiry of his lease cannot be treated as a trespasser, and is entitled to have his tenancy determined by a reasonable notice to quit. (*Ram Khelawan Sing* v. *Makund Lal*, I. L. R., 7 Calc., 710.) What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and the local customs as to reaping crops and tilling land. It is not necessary that the notice must expire at the end of the year. (*Jagat Chandra Rai* v. *Rup Chand Chango*, I. L. R., 9 Calc., 48 ; 11 C. L. R., 143 ; *Bidhumukhi Debi* v. *Kifaiyat-ullah*, I. L. R., 12 Calc., 93.) It need not be a notice to quit on a certain day. (*Hem Chandra Ghosh* v. *Radha Prasad Palit*, 23 W. R., 440.) A ten days' notice is not sufficient. (*Ram Ratan Mandal* v. *Netro Kali Dasi*, I. L. R., 4 Cal., 339.) A thirty days' notice at a time when the crops are ripening, is not sufficient. (*Jubraj Rai* v. *Mackenzie*, 5 C. L. R., 231.) Neither is a two months' notice expiring in Falgun, when cultivation began. (*Bidhumuki Debi* v. *Kifaiyat-ullah*, I. L. R., 12 Calc., 93.) The notice to quit need not necessarily be a three months' notice. (*Radha Gobinda Koer* v. *Rakhal Dass Mukharji*, I. L. R., 12 Calc., 82); but a three months' notice may be a reasonable notice to quit. (*Janu Mandar* v. *Brojo Singh*, 22 W. R., 548.)

Service of notice to quit.—Where a notice to quit was sent by a registered letter, the posting of which was proved, and which was produced in Court in the cover in which it was despatched, that cover containing the notice with an endorsement upon it, purporting to be by an officer of the Post Office, stating the

refusal of the addressee to receive the letter, it was held that this was a sufficient service of the notice. (*Jogendro Chandra Ghosh* v. *Dwarkanath Karmokar*, I. L. R., 15 Calc., 681 ; *Lutf Ali Miah* v. *Piari Mohan Rai*, 16 W. R., 223.)

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has, within three months before the institution of the suit, refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment

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under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Sub-sections (2) and (4).—For the rules framed by the Local Government under sub-sections (2) and (4) of this section; see rules 3 and 4, Chap. V, Government Rules, Appendix I.

Sub-section (8) and (9).—It is to be observed that in determining fair and equitable rents for non-occupancy-raiyats, the point to which the Court is to have regard is the rent generally paid by raiyats for land of a similar description and with similar advantages in the same village; while in determining fair and equitable rents in the case of occupancy-raiyats, the rent for the time being payable is presumed to be fair, and is liable to enhancement or reduction on certain specified grounds. In settling fair rents under Chap. X, the Revenue-officer shall presume for occupancy and non-occupancy-raiyats alike that the existing rent is fair till the contrary is proved. (Sec. 104 (3).)

Former law as to the assessment of non-occupancy-raiyats' rents.—The rulings under the former law as to the assessment of non-occupancy-raiyats' rents are not uniform. In some it is said that a non-occupancy-raiyat is liable to pay the highest rack-rent, and that his landlord can make what terms he pleases with him, or turn him out of occupation. (*Kubir Sirdar* v. *Golak Chandra Chakravartti*, 3 W. R., Act X, 126; *Manirudin Mirdha* v. *Kennie*, 4 W. R., Act X, 45; *Gopal Lal Thakur* v. *Badaruddin*, 7 W. R., 28; *Janu Mandar* v. *Brijo Singh*, 22 W. R., 548). In others, it was held that a non-occupancy-raiyat was bound to pay only a fair and equitable rent. (*Shalkart* v. *Bharat Lal*, W. R., Sp. No., Act X, 115; *Jian Lal Jha* v. *Kali Nath Jha*, 5 W. R., Act X, 41; *Pitambar Karmokar* v. *Ram Tanu Rai*, 10 W. R., 123; *Bakranath Mandal* v. *Binodram Sen*, 1 B. L. R., F. B., 25; 10 W. R., F. B., 33; *Ram Mohan Ghosh* v. *Madhu Sudan Chaudhri*, 11 W. R., 304.)

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the

purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

This prevents the raiyat being ejected on the expiry of this lease, as he can be after the expiry of his initial lease.

Changes made by the Actin the position of non-occupancy-raiyats.—The changes made by the Act in the position of the non-occupancy-raiyat may be here pointed out : (1) Under the old law, the non-occupancy-raiyat could get a pottah only at the rates agreed upon with his landlord. Now, this provision applies only at the time of his admission to the land. When he has been once admitted to the land, if allowed to stay on after the expiry of the term of his initial lease, he can only be made to pay a fair and equitable rent, as defined in sec. 46, sub-sec. 9. (2) Formerly, he could be ejected on the expiry of his lease, and if he had no lease, he could be ejected at any time after service on him of a notice to quit. Now, he can only be ejected on the expiry of his lease, if it be a written and registered one, and even then only by suit. If allowed to stay on for six months after its expiry without a suit for ejectment being brought against him, he can no longer be ejected on that ground. He can only be ejected for non-payment of his rent, or on the other grounds specified in sec. 44, cls. (*a*), (*b*), and (*d*). (3) Formerly, his rent was liable to enhancement, as often as his landlord pleased, after service of notice of enhancement. Now, he is liable to enhancement in two ways : (*a*) by registered agreement, and (*b*) by suit in Court, when he can only be made to pay what the Court determines to be a fair and equitable rent ; but enhancement by suit carries with it, if the raiyat accepts it, a lease for five years, at the rate fixed by the Court, after which he can be ejected, unless he has meanwhile acquired rights of occupancy. (4) Formerly, he could make no improvements on his land ; and, if he did make them, he was not entitled to any compensation for them on ejectment from the land. Now, he can construct a well and a suitable dwelling-house for himself and his family, and can make almost any improvement on his land that he pleases (sec. 79) ; and he is entitled to compensation for such improvements on being ejected from his holding (sec. 82).

Further incidents of a non-occupancy-raiyat's status.—It is to be noticed that there is no provision in the Act enabling a non-occupancy-raiyat to claim an abatement of the rent previously paid by him, as there is in the case of occupancy-raiyats (see sec. 38). A non-occupancy-raiyat, therefore, is not entitled to have his rent reduced, except on the ground of diminution of the area of his holding (sec. 52, cl. *b*). But in this respect no change has been made in the former law. A non-occupancy-raiyat may sub-let his holding (sec. 85), and his rights are heritable (sec. 20 (3)), and transferable by custom (secs. 178 (3), (*d*), and 183).

CHAPTER VII.

UNDER-RAIYATS.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself

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pays by more than the following percentage of the same, namely) :—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

This applies to contracts made before the passing of the Act as well as to contracts made after it.

Distinction between "lawfully recoverable" and "lawfully payable."—It is to be observed that this section makes any amount in excess of the limits laid down in cls. (*a*) and (*b*) of this section not *recoverable* under this Act. It does not provide that such excess amount shall not be *payable* by the under-raiyat. Hence, the excess amount may still come under the definition of "rent," laid down in sec. 3, cl. (5); for it may possibly be lawfully payable, though not lawfully recoverable. Thus, the holder of an estate in respect of which a notice of valuation has been issued under sec. 17, Act IX of 1880 (B.C.) (the Cess Act), is precluded from recovering rent in respect of land for which the prescribed return has not been filed, though such rent may manifestly be lawfully payable. A Revenue-officer, when proceeding under Chap. X of this Act, will, therefore, be justified in recording as the rent of an under-raiyat any amount paid by him, though it may be in excess of the amount lawfully recoverable under the provisions of this section; and a raiyat-landlord receiving such an amount will not necessarily render himself liable to the penalty provided in sec. 75 for exacting a sum in excess of the rent lawfully payable.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

An under-raiyat cannot be ejected except in execution of a decree.—There is a further restriction imposed by the Act on the ejectment of under-raiyats, as well as upon tenants of all classes, viz., that imposed by the provisions of sec. 89, which provide that no *tenant* shall be ejected from his tenure or holding except in execution of a decree. The word "tenant" in this section is, no doubt, meant to include an under-raiyat; for an under-raiyat is a tenant. (See also sec. 178 (1) (*c*). At the same time, his interest in the land is not a "tenure," nor yet a "holding;" for in sec. 3, cl. (9), "holding" is defined as "a parcel or parcels of land held by a raiyat." There is, therefore, room for contention as to whether an under-raiyat may not be ejected by his landlord without resorting to the Courts. This cannot, however, have been the intention of the framers of this Act, and there can be no doubt that an under-raiyat, ejected otherwise than in accordance

with the provisions of this Act, could recover possession of his land by means of a possessory suit under sec. 9 of the Specific Relief Act (I of 1877). See *Janardan Acharji* v. *Haradhan Acharji*, 9 W. R., 513 ; B. L. R., F. B., 1020.) It is clear from sec. 66 (1) that an under-raiyat may be ejected for failure to pay an arrear of rent, but, of course, only in execution of a decree of Court, and it would seem that unless, in accordance with some local custom he has acquired rights of occupancy, he may, subject to the restrictions mentioned above, be ejected at his raiyat-landlord's pleasure.

Notice to quit.—No notice to quit is required to be given to an under-raiyat holding under a written lease, to compel him to quit on the expiry of his lease, but if holding otherwise than under a written lease (cl. *b*), he is entitled to, at least, a year's notice. He, therefore, gets a longer notice to quit than an occupancy-raiyat does (sec. 45). The notice to quit should be served in accordance with rule 3, Chap. I, of the Government rules under the Tenancy Act. (See Appendix I.)

Acquisition by under-raiyats of occupancy-rights.—This chapter is silent on one very important point, namely, the question of the acquisition by under-raiyats of occupancy-rights as against their raiyat-landlords. Under Acts X of 1859 and VIII of 1869 (B. C.), rights of occupancy could not be acquired in lands sublet by an occupancy-raiyat for a term or year by year. This would seem to imply that an under-raiyat could acquire rights of occupancy in lands sublet to him otherwise than for a term or year by year, that is, on a permanent lease, and there are some rulings to this effect (*Jamiatunnissa* v. *Nur Mahomed*, W. R., Sp. No., Act X, 77 ; *Ketal Gain* v. *Nadir Mistri*, 6 W. R., 168 ; *Nil Kamal Sen* v. *Danish Sheikh*, 15 W. R., 469) ; but in several cases the High Court has laid down the broader rule, that a sub-lessee from a raiyat, having a right of occupancy, and no more than a right of occupancy (*i. e.*, an under-raiyat), could not acquire a right of occupancy for himself in any land held or cultivated by him. (See *Gilmore* v. *Sarbessari Dasi*, W. R., Sp. No., 1864, Act X, 72 ; *Abdul Jabbar* v. *Kali Charan Datta*, 7 W. R., 81 ; *Kali Kishor Chatarji* v. *Ram Charn Shaha*, 9 W. R , 344 ; *Haran Chandra Pal* v. *Mukta Sundari*, 10 W. R., 113 ; 1 B. L. R , A. C., 81 ; *Ramdhan Khan* v. *Haradhan Paramanik*, 12 W. R., 404 ; *Ishan Chandra Ghosh* v. *Harish Chandra Banarji*, 18 W. R , 19 ; *Annopurna Dasi* v. *Radha Mohan Puttro*, 19 W. R., 95.) Now, as the Act is silent on this point, the question is left to be regulated by custom. An under-raiyat cannot acquire rights of occupancy in any land held by him, except where there is a custom or local usage under which he can acquire such a right. That this is now the law on the subject is clear from illustration 2 to sec. 183, which runs thus : "The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly, or by necessary implication, modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act."

Further incidents of an under-raiyat's status.—The question of the transferability of an under-raiyat's rights is left unsettled by this Chapter. Under the old law, such rights were not transferable without the consent of the raiyat-landlord. (*Bonomali Bajadar* v. *Koilash Chandra Mozumdar*, I. L. R., 4 Calc., 135.) But there can be no doubt that now, under the provisions of sec. 183, such rights may be transferable under custom or local usage, but not otherwise. The Chapter, is, further, silent as to whether an under-raiyat can sublet. Section 85 does not

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seem to provide for the case of an under-raiyat sub-letting, yet the Act distinctly contemplates an under-raiyat's subletting his land, as in sec. 4 (3), an under-raiyat is defined as a tenant holding whether immediately or mediately under a raiyat. There would seem to be nothing in the Act to make an under-raiyat's interest heritable (sec. 20 (3)), unless there be a custom or usage to this effect. In a decision under the old law (*Hiramoni* v. *Ganga Narain Rai*, 10 W. R., 384), it has been said that when a tenant, who holds land for a term, under-lets that land, he parts with his own interest therein to the extent of the interest created by the underlease, and cannot, therefore, determine the interest of his under-tenant by surrendering his own term to the landlord. Whether this decision will hold good now, seems doubtful. Under the present Act, an under-raiyat's interest will only be secured against the raiyat-landlord's surrender of the holding, if secured by a registered instrument. (Sec. 86 (6).)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

The following general principles relating to the relation of landlord and tenant, based principally on the rulings of the High Court, have not been embodied in this Act, on the ground that it is not intended to be a complete digest of the Rent Law of Bengal. But they have so much become a part of the Rent Law of Bengal, that it would probably be felt to be a serious omission if no reference were made to them. We can find no better place for inserting them than the commencement of this chapter, which deals with "General Provisions as to rent."

Relation of landlord and tenant must exist before provisions of Rent Law can be applied —Before putting in force the provisions of the Rent Law between parties, a Court must first be satisfied that the relation of landlord and tenant exists between them. (*Jishan Hossein* v. *Bakar*, 3 W. R., Act X, 3 ; *Ramessar Adhikari* v. *Watson & Co.*, 7 W. R., 2 ; *Doyal Chand Sahai* v. *Nabin Chandra Adhikari*, 8 B. L. R., 180 ; *Chandra Nath Chaudhri* v. *Ahsanullah Mandal*, 10 W. R., 438 ; *Mohan Mahtu* v. *Shamsul Hoda*, 21 W. R., 5.) In one case it was held that the mere fact of a person being registered under the provisions of Bengal Act VII of 1876 as proprietor of the land in respect of which he sues to recover rent is not sufficient to entitle him to sue for it. He must show that the relation of landlord and tenant exists, or that he has a good title to the estate of which he is the registered owner. (*Ram Krishna Das* v. *Harain*, I. L. R., 9 Calc., 517 ; 12 C. L. R., 141.) But this is no longer law ; for, by sec. 60 of this Act, it has been enacted that the receipt of a person registered under Act VII (B. C.) of 1876, as the proprietor, manager, or mortgagee of an estate is a sufficient discharge for rent, and the person liable for the rent is not entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. Such a relation will not exist between a raiyat and a zamindar until the former has obtained possession. (*Bharat Chandra Sen* v. *Osimuddin*, 6 W. R., Act X, 56 ; *Harish Chandra Kundu* v. *Mohini Mohan Mitra*, 9 W. R., 582 ; *Bullen* v. *Lalit Jha*, 3 B. L. R., App., 119.) Eviction by title paramount to that of the lessor is a good answer in a suit for arrears of rent. (*Gopanand Jha* v. *Gobinda Prasad*, 12 W. R., 109.) The relation of

landlord and tenant does not exist between a landlord and a trespasser. (*Mohant Jalha* v. *Kailash Chandra De*, 10 W. R., 407.)

How the relation of landlord may arise.—The relation of landlord and tenant may arise between the parties by means of a contract, express or implied, between them, or by operation of law. Thus, in the case of *Nityananda Ghosh* v. *Krishna Kishor* (W. R., Sp. No., 1864, Act X, 82), in which a raiyat admittedly held and cultivated a zamindar's land, though without express permission to cultivate on the part of the zamindar, or express agreement to pay rent on the part of the raiyat, it was held that, by the universal custom of the country, the raiyat was the zamindar's tenant, and bound, while so holding and cultivating, to pay him a fair rent. This was on the ground that there was an implied contract between them. Parties in possession make themselves tenants by use and occupation and may be sued for rent, even though not registered by the zamindar. (*Lalanmani* v. *Sonamani Debi*, 22 W. R., 334; see also *Lakhikant Das* v. *Sumiruddin Lashkar*, 21 W. R., 208; 13 B. L. R., 243; and *Swarnamayi* v. *Dinonath Gir Sanyasi*, I. L. R., 9 Calc., 908.) This rule will apply in the case of an *utbandi* raiyat. (*Mirzan Biswas* v. *Hills*, 3 W. R., Act X, 159.) Payment of rent is always held to be good evidence of an implied contract of tenancy. The resumption by Government of invalid *lakhiraj* land creates the relation of landlord and tenant between the zamindar and the holder of such land. (*Haro Prasad Chaudhri* v. *Shama Prasad Rai*, 6 W. R., Act X, 107.) Similarly, the decree of a competent Court, finding that the defendant has no right to hold land as *lakhiraj*, creates this relation between him and the proprietor of the land. (*Saudamini Debi* v. *Sarup Chandra Rai*, 8 B. L. R., App., 82; 17 W. R., 363.)

Effect of non-registration of proprietor's name, and of non-submission of cess returns.—In some cases, however, in which the relation of landlord and tenant admittedly exists, the tenant is not bound to pay the landlord rent. Thus, if the tenant plead that the rent-claimant, being a proprietor, and bound, therefore, to have his name registered in the Collector's Registers under sec. 38, Act VII of 1876 (B. C.), has, yet, not had his name registered, and that he is, therefore, not entitled to the rent, the Court must, if the plea is proved, dismiss the suit. Similarly, under the Cess Act, IX of 1880, B. C., all holders of estates or tenures, in respect of which a notice of valuation or re-valuation has been issued under sec. 17 of that Act, are precluded (sec. 19) from suing or recovering rent for any land or tenure in respect of which the prescribed returns have not been lodged. (*Jagmohan Tewari* v. *Finch*, I. L. R., 9 Calc., 62.) These, therefore, are instances in which rent is lawfully payable, though not lawfully recoverable through the Courts (see note to sec. 48). The Collector may send a list to the Civil Court of such holders so making default, and the Court is bound to take judicial notice of the same (sec. 19); but whenever the return is lodged, the disability ceases. Further, every holder of an estate or tenure in respect of which a return has been made under the Cess Act is precluded (*a*) from recovering any rent whatever for any land, building, holding, or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure, for the rent of which the rent is claimed, was created subsequently to the lodging of such return; and (*b*) from suing or recovering rent at a higher rate than is mentioned in such return for any land, tenure, or holding included in such return, unless it be proved that the rent of such land has been lawfully enhanced subsequently to the lodging of such return.

CHAP. VIII. SEC. 49.

Forms of returns under the Cess Act.—The returns which must be filed under the Cess Act are the following :

Form of Return prescribed by sec. 14.

Amount of Government revenue or rent payable by the estate or tenure ... ... Rs. A. P.

PART I.

District

Name by which the estate or tenure is known, and the number which it bears on the Collector's General Register, or on any other register kept by the Collector.

Details of lands in the actual occupation or cultivation of the person submitting the return :—

1	2	3	4	5
Pargana.	Name of village and thána in which the lands are situate.	Area of land.	Deduct area of land situate within any municipality.	Annual value of remaining land.

NOTE.—*In the body of this statement should be entered only nij-jote land and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.*

PART II.

District

Name and number of estate or tenure, as in Part I.

Details of lands held by cultivating raiyats paying direct to the persons submitting the return :—

1	2	3	4	5	6	7
Pargana.	Name of village and thána in which the lands are situate.	Name of raiyat, name of village, thána and district in which he resides.	Area occupied, if known.	Annual rent.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

PART III.

District

Name and number of estate or tenure, as in Part I.

Details of the tenure-holders paying to the person submitting the return :—

1	2	3	4	5	6	7	8
Name of tenure-holder and person paying rent for him borne on the books of holder of estate or tenure.	Name of village, thána and district in which such person resides.	Name of village and thána in which tenure is situated.	Name of village and thána in which mal kachahri is situate.	Area, if known.	Annual rent paid by tenure-holder.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

PART IV.

District

Name and number of estate or tenure, as in Part I.

Details of lands included in the estate or tenure of the person submitting the return, which are held by others than himself, but for which no rent is paid :—

1	2	3	4	5	6	7
Pargana in which situate.	Name of village and thánd in which situated.	Name of holder and owner, if known.	Name of village, thanâ, and district in which the holder resides.	Area, if known.	Deduct area of land included in any municipality.	Annual value of remaining land.

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information, and belief.

Signed ———

N.B.—*This return must be signed by the holder or his authorized agent, whose address must also be given.*

It is of importance to note that *bhaoli* lands, that is, lands held at a produce-rent, must be included in these returns, as well as lands held at a money-rent. (*Jag Mohan Tawari* v. *Finch*, I. L. R., 9 Calc., 62.) It is further of much importance to landlords to note that before they recover road-cess, which is rent (sec. 3 (5)), they must prove the service of the notices of the preparation of the valuation-rolls, and that no presumption as to their due service can be made in their favour. Thus, in *Ahsanullah Khan* v. *Trilochan Bagchi* (I. L. R., 13 Calc., 197), it was held that the notice provided by sec. 52 of the Road Cess Act did not come within the presumption of sec. 114, cl. (*c*) of the Evidence Act, and must be proved. In this case it was said that "when under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation, it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done. No presumption can be made in favour of the things prescribed by the Act having been done." In another case (*Rash Behari Mukharji* v. *Pitambari Chaudhurani*, I. L. R., 15 Calc., 237), the plaintiffs sued to recover arrears of road and public works cesses on account of certain rent-free land, claiming double the amount under sec. 58 of the Cess Act. It was found that no notice of the valuation had been published as required by sec. 52 of the Act, and it was held by the lower Court that the plaintiffs were, therefore, not entitled to recover double the amount under sec. 58. It was then contended that they were at any rate entitled to recover the amount of the cesses with interest under sec. 62. It was held, however, that the latter section did not give the holder of the estate or tenure a right to recover the cesses payable under sec. 56 before publication of notice, and that the plaintiffs were, therefore, not entitled to a decree, and that their suit must be dismissed.

Cess Act returns supply a binding record of rents.—It is to be observed that these returns contain the areas and rents of every tenure-holder's tenure and raiyat's holding, and that they, therefore, supply a record of rents, which is binding as against the landlord ; further, that the landlord is absolutely precluded from suing for rent not mentioned in such returns, or at a higher rate than the

rate mentioned in them unless it be proved that the rent has been lawfully enhanced subsequently to the filing of the return. All this would appear to have been overlooked in the discussions on the subject of enhancing rent out of Court, during which it was asserted that, there being no written engagements showing the amounts of the present rents, it would be unreasonable to insist that contracts for the enhancement of existing rents should be written and registered. So far as the landlord is concerned, there is, in the cess-returns, a written record of rents; and if any rent is claimed from occupancy-raiyats over and above the amounts shown in that record, the landlord must show that the rent entered therein has been enhanced since the returns were lodged either (*a*) by order of a Court, or (*b*) by registered agreement. It is doubtful whether the actual payment of an enhanced rent for three years would, having regard to sec. 29, proviso 1 of this Act, suffice to show that the rent mentioned in the cess-returns had been lawfully enhanced. The obligation to have a contract for the enhancement of occupancy-raiyats' rents written and registered does not prevent a landlord from recovering an enhanced rent actually paid for three years, though there be no registered agreement; but whether actual payment for three years would be proof that rent has been lawfully enhanced, which is what is required under sec. 20 of the Cess Act, is a different question. It would, therefore, appear that proof of payment of the rent shown in the cess-returns would be a sufficient answer to a claim for a higher rent than is mentioned therein, till the landlord has shown that the rent given in the returns has not only been enhanced, but that the enhancement was in accordance with law. These stringent provisions of the Cess Act, read with sec. 29 of this Act, make it very necessary for landlords to exercise great care in the preparation of the returns they lodge under the Cess Act. If these returns show higher rents than are actually payable or paid, the landlord is liable for an unduly high amount of cess; if they show less than is actually paid or payable, the landlord is precluded from suing for, or recovering, more than is shown in the returns, unless he prove that the rent shown in the returns has been enhanced since they were filed, and that it has been enhanced in accordance with law, which, in the case of occupancy-raiyats, must ordinarily be by decree of Court, or by written and registered agreement. Neither the Civil Courts, Revenue-officers, raiyats, or zamindars appear to have hitherto paid much attention to these provisions of the Cess Act affecting suits for recovery of rent or for enhancement of rent.

Leases cannot be granted for terms exceeding grantor's interest.—No landlord can grant a valid lease for a term exceeding his own interest. (*Kailas Chandra Biswas* v. *Biressari Dasi*, 10 W. R., 408; *Damri Shaikh* v. *Bisseshar Lal*, 13 W. R., 291; *Harish Chandra Rai* v. *Sri Kali Mukharji*, 22 W. R., 274. See *contra*, *Hiramani* v. *Ganganarain Rai*, 10 W. R., 384.) A lease granted for a term so in excess is valid to the extent of such interest, and void only as to the excess; but if the lessor subsequently acquires such excess, the lease is, as against him, valid for the excess also. (*Amir Ali* v. *Hira Singh*, 20 W. R., 291; sec. 115, Act I of 1872.)

A landlord is bound to give peaceable possession.—A landlord is bound upon a new letting to give the tenant peaceful possession of the property (*Mani Datta Singh* v. *Campbell*, 11 W. R., 278; 12 W. R., 149; *Radhanath Chaudhri* v. *Jai Sundra Moitra*, 2 C. L. R., 302), and a suit for rent will not lie where the lessee has never obtained possession of the land leased to him (*Harish Chandra Kundu* v. *Mohini Mohan Mitra*, 9 W. R., 582; *Bullen* v. *Lalit Jha*, 3 B. L. R., App., 119).

It is not necessary for the lessee to apply to his lessor to be put in possession. (*Mani Datta Singh* v. *Campbell*, in review, 12 W. R., 149.) A landlord is further bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, undertenure, holding, or land. But this duty only extends to interruption or disturbance by the landlord himself, or any one claiming under, or paramount to, him, and does not extend to interruption or disturbance by third parties (*Gobind Chand Jatti* v. *Manmohan Jha*, 14 W. R., 43 ; *Haimobati Dasi* v. *Sri Krishna Nandi*, 14 W. R., 58 ; *Gobind Chandra Datta* v. *Krishna Kanto Datta*, 14 W. R., 273 ; *Krishna Sundra Sandyal* v. *Chandra Nath Rai*, 15 W. R., 230; *Braja Nath Pal* v. *Hira Lal Pal*, 1 B. L. R., A. C., 87 ; 10 W. R., 120 ; *Bullen* v. *Lalit Jha*, 3 B. L. R., App., 119 ; *Donzelle* v. *Gridhari Singh*, 23 W. R., 121) ; and in a suit for rent in which the lessee pleaded dispossession, but was not able to show that his lessor had no title, and that the person who ousted him had a title, it was held that his defence had failed (*Rang Lal Singh* v. *Rudra Prasad*, 17 W. R., 386). Further, in a suit by a landlord to recover arrears of rent from tenants, who had been forcibly compelled by the superior holders of a tenure over the plaintiff to execute a kabulyat to themselves, and to pay rent accordingly, it was held that such wrongful act of the intervenor-defendants (the superior holders) was not, in law, sufficient to constitute an ouster of the plaintiff, but gave the tenant-defendants a cause of action against them for damages. (*Chandra Nath Bharttacharji* v. *Jagat Chandra Bharttacharji*, 22 W. R., 337.)

Tenant cannot deny landlord's title.—No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property ; and no person who came upon immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given. (Sec. 116, Act I of 1872.) But although a tenant may not, during the continuance of the tenancy, deny that his landlord had a title at the beginning of such tenancy, he may show that such title has expired (*Burn & Co.* v. *Bisho Mayi Dasi*, 14 W. R., 85 ; *Mohan Mahtu* v. *Shamsul Hoda*, 21 W. R., 5), or has been defeated by a title paramount (*Gopanand Jha* v. *Gobind Prasad*, 12 W. R., 109). Further, the words "at the beginning of the tenancy" in sec. 116, Act I of 1872, only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession, so that when A, a raiyat, being in possession of a certain holding, executed a kabuliyat regarding this holding in favour of B (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to B thereunder, it was held that A was not estopped by sec. 116 of the Evidence Act from disputing B's title (*Lal Mahomed* v. *Kalonas*, I. L. R., 11 Calc., 519) ; and one who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other (*Beni Madhub Ghosh* v. *Thakurdas Mandal*, B. L. R., F. B., 588 ; 6 W. R., Act X, 71, *Gauri Das* v. *Jagannath Rai*, 7 W. R., 25). Further, when the ostensible landlord is not the real lessor and beneficially entitled to the rent, but is only a *benamidar* for a third party, the tenant is competent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. (*Donzelle* v. *Kedarnath Chakrabartti*, 7 B. L. R., 720 ; 16 W. R., 186 ; 20 W. R., 352 ; *Indrabatti Koer* v. *Mahbub Ali*, 24 W. R., 44.)

CHAP. VIII. SEC. 49.

Possession of a tenant not adverse to landlord.—The possession of a tenant can never be adverse to his landlord; and as long as a tenant admits the tenancy, the mere non-payment of rent for twelve years or more will not put an end to the relation of landlord and tenant. (*Sristidhar Mazumdar* v. *Kalikant*, 1 W. R., 171; *Watson & Co.* v. *Sharat Sundari Debi*, 7 W. R., 395; *Trailokhya Tarini Dasi* v. *Mohima Chandra Matak*, 7 W. R., 400; *Girish Chandra Rai* v. *Bhagwan Chandra Rai*, 13 W. R., 191; *Lakhu Khan* v. *Wise*, 18 W. R., 443; *Duli Chand* v. *Sham Behari Singh*, 24 W. R., 113; *Haradhan Rai* v. *Holodhar Chandra Chaudhri*, 25 W. R, 56; *Raj Kishor Sarma Chakrabartti* v. *Girija Kant Lahiri*, 25 W. R., 66; *Rango Lal Mandal* v. *Abdul Ghaffur*, I. L. R., 4 Calc., 314; *Paresh Narain Rai* v. *Kushi Chandra Talukdar*, I. L. R., 4 Calc., 661). When A holds under B's tenant, his possession is not adverse to B. (*Bungsraj Bhukta* v. *Megh Lal Puri*, 20 W. R., 398.) But when a tenant openly sets up an adverse title and holds adversely, limitation runs (*Haronath Rai* v. *Jogendra Chandra Rai*, 6 W. R., 218; *Najimudin Hossein* v. *Lloyd*, 15 W. R., 232) from the time when the landlord had notice of the adverse title so set up (*Prahlad Sen* v. *Ran Bahadur Singh*, 12 W. R. (P. C.), 6; *Gaura Kumari* v. *Bengal Coal Co.*, 13 W. R., 129; 12 B. L. R., 282; *Gaura Kumari* v. *Saru Kumari*, 19 W. R., 252; *Pitambar* v. *Nilmani Singh Deo*, I. L. R., 3 Calc., 793), and a trespasser, merely by alleging tenancy in his written statement, does not preclude himself from setting up the defence of the law of limitation. (*Dena Mani Debi* v. *Durga Prasad Mazumdar*, 21 W. R., 70; *Bijai Chandra Banarji* v. *Kali Prasanno Mukharji*, I. L. R., 4 Calc., 327; but see *Watson & Co.* v. *Sharat Sundari Debi*, 7 W. R., 395.)

Forfeiture of rights by denial of landlord's title.—A tenant who directly repudiates the relation of landlord and tenant and sets up an adverse title in another or himself, forfeits all his rights, and the landlord is entitled to treat the relation as determined. (*Nadir Beg* v. *Muddaram*, 2 W. R., Act X., 2; *Bissonath Rai* v. *Bhairab Singh*, 7 W. R., 145; *Ramen* v. *Kandapuni*, 1 Mad. H. C., 115; *Ram Nuffar Bhurttacharji* v. *Dol Govinda Thakur*, 1 C. L. R., 421; *Debi Misra* v. *Mangar Miah*, 2 C. L. R., 208; *Satyabhama Dasi* v. *Krishna Chandra Chattarji*, I. L. R, 6 Calc., 55; *Mozharuddin* v. *Gobinda Chandra Nandi*, I. L. R., 6 Calc, 436; *Shamsher Ali* v. *Daya Bibi*, 8 C. L. R., 150; *Ishan Chandra Chattopadhya* v. *Shama Charan Datta*, I. L. R., 10 Calc., 41.) But the fact of a tenant having stated in a former suit that he had a good title as against a person alleging himself to be the assignee of the original landlord, does not constitute a forfeiture of the tenure, or warrant a suit by the landlord for *khas* possession. (*Durga Kripa Rai* v. *Sri Janu Lathak*, 18 W. R., 465.) As a cause of action must be based on something that accrued antecedent to the suit, a denial by tenants of their landlord's title in their written statement filed in a suit will not entitle the landlords to a decree in that suit on the ground of forfeiture. (*Prannath Shaha* v. *Madhu Khulu*, I. L. R., 13 Calc., 96; but see *contra*, *Gopalrao Ganesh* v. *Kishor Kalidas*, I. L. R., 9 Bom., 527; *Mayanvanjari* v. *Nimini*, 2 Mad. H. C., 109.) In a suit in which the plaintiff admitted that the defendant had a *kursa jama*, but the defendant set up a larger interest in himself, viz., a permanent *malguzari jama*, it was held that this amounted merely to a denial of the landlord's right to raise the rent, and was not necessarily a renunciation or disclaimer of his title of landlord. (*Kali Krishna Tagore* v. *Ghulam Ali*, I. L. R., 13 Calc., 3; *Doma Rai* v. *Melon*, 20 W. R., 416; but see *Babu* v. *Visvanath Joshi*, I. L. R., 8 Bom., 228.) When a defendant setting up a permanent *howladari* tenure, admitted that he held at the rent alleged by the plaintiff, it was decided that this was not such a disclaimer as

would result in law in a foreiture of his tenure. (*Kali Krishna Tagore* v. *Ghulam Ali*, I. L. R., 13 Calc., 248.) It would appear, however, that forfeiture by disclaimer can no longer take place under this Act; for secs. 10, 18, 25, 44, and 49 set forth on what grounds tenure-holders, raiyats at fixed rents, occupancy and non-occupancy-raiyats and under-raiyats can be ejected. They further provide that these classes of tenants cannot be ejected except on the grounds specified therein. (Compare also sec. 89 and sec. 178 (1) (c)). Hence, it would seem that no tenant can be ejected under this Act for disclaiming his landlord's title. It may be different, however, if the disclaimer has been made and the forfeiture effected before this Act came into operation.

Rules and presumptions as to amount of rent.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Rules and presumptions as to fixity of rent.
Secs. 3, 4 Act X, 1859; secs. 3, 4 Act VIII, B. C., 1869.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it is relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Sub-section (1).—The existence of a Permanent Settlement is not a condition precedent to the application of the provisions of this sub-section. It is immaterial whether there has been a Permanent Settlement or not. It is sufficient if the rent or rate of rent has not been changed since the year 1793, when the Permanent Settlement was made, and if this is the case, the rent cannot be increased. (*Sada Nando Mahanti* v. *Nauratan Mahanti*, 16 W. R., 289.)

Sub-section (2).—To what lands the presumption does not apply.—This sub-section must be read with sec. 115, which provides that when the particulars mentioned in sec. 102, cl. (*b*), have been recorded under Chap. X (Record of Rights and Settlement of Rents), the presumption under this sub-section shall not thereafter apply to that tenancy. This presumption does not apply to temporarily-settled estates, as in such estates the rates of rent are necessarily not fixed in perpetuity. (See sec. 191.) It is said in the Government of India Gazette of March 14th, 1885, p. 58, that this presumption does not apply to produce-rents, for "where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery, this very fact discounts the rise in prices, and rents are thus, of necessity, enhanced or reduced, as prices rise or fall." (See note to sec. 18, p. 56.)

The presumption arises notwithstanding unlawful eviction.—Eviction will not necessarily put an end to a tenure-holder's or raiyat's tenancy. If the eviction be found to be unlawful and the tenant be restored to his position, he will be restored to his original holding, if the holding would not have ceased to exist but for the eviction. (*Latifunnissa Bibi* v. *Pulin Bihari Sen*, W. R., Sp. No., F. B., 91. (See also *Mahomed Ghazi Chaudhri* v. *Nur Mahomed*, 24 W. R., 324, and *Radha Gobind Koer* v. *Rakhal Das Mukharji*, I. L. R., 12 Calc., 82.) But the presumption arises in favour of a tenant, whose rent is sought to be enhanced by a purchaser at a revenue-sale. (*Purnananda Asrum* v. *Rukmini Guptani*, I. L. R., 4 Calc., 793; *Sadak Sirkar* v. *Mahamaya Debi*, 5 W. R., Act X, 16; *Harihar Mukharji* v. *Padma Lochan De*, 7 W. R., 176.)

Pleadings sufficient to raise this presumption.—In order that a Court should raise this presumption, it is not necessary that the tenure-holder or raiyat should plead in so many words that he has held his tenure or holding since the time of the Permanent Settlement. It is sufficient if he pleads and proves payment of rent at a uniform rate for twenty years, and makes no allegation inconsistent with his tenure or holding having been so held; for the Court is then bound to make the presumption in his favour. (*Bhairabnath Sandyal* v. *Mati Mandal*, W. R. Sp. No., Act X, 100; *Man Mohan Ghosh* v. *Hasrat Sirdar*, 2 W. R., Act X, 39; *Ramratna Sirkar*, v. *Chandra Mukhi Debi*, 2 W. R., Act X, 74: *Jaga Mohan Das* v. *Purna Chandra Rai*, 3 W. R., Act X, 133; *Hem Chandra Chatarji* v. *Purna Chandra Rai*, 3 W. R., Act X, 162; *Raj Kumar Rai* v. *Assa Bibi*, 3 W. R., Act X, 170; *Nyamat Ullah* v. *Gobinda Chandra Datta*, 4 W. R., 25; *Dhan Singh Rai* v. *Chandra Kant Mukharji*, 4 W. R., Act X, 43; *Guru Das Mandal* v. *Darbari*, 5 W. R., Act X, 86; *Sham Lal Ghosh* v. *Madan Gopal Ghosh*, 6 W. R., Act X, 37; *Grish Chandra Basu* v. *Kali Krishna Haldar*, 6 W. R., Act. X, 58; *Rakhal Das Tewari* v. *Kinuram Haldar*, 7 W. R. 242; *Pulin Bihari Sen* v. *Nemai Chand*, 7 W. R., 472; *Manikarnika Chaudhurani* v. *Anandamayi Chaudhurani*, 8 W. R., 6; *Sudrishti Lal*

Chaudhri v. *Nathu Lal Chaudhri*, 8 W. R., 487; *Harak Singh* v. *Tulsi Ram Sahai*, 11 W. R., 84; *Mitrajit Singh* v. *Tundan Singh*, 3 B. L. R., App., 88; 12 W. R., 14; *Harak Singh* v. *Tulsi Ram Sahai*, 13 W. R., 216; *Tirthanand Thakur* v. *Herdu Jha*, I. L. R., 9 Calc., 252.)

When presumption does not arise.—If the pleadings contain any allegation inconsistent with the tenure or holding having been held from the time of the Permanent Settlement, or if it be shown that they are held under a lease of date subsequent to the Permanent Settlement, and it is not alleged that the tenure or holding was held previous to the date of this lease, the Court cannot make the presumption. (*Lachmi Prasad* v. *Ram Ghulam Singh*, 2 W. R., Act. X, 30; *Watson & Co.* v. *Chota Jura Mandal*, Marsh., 68; *Ram Lal Ghosh* v. *Pekam Lal Das*, Marsh., 403: *Ram Krishna Sirkar* v. *Dilar Ali*, W. R., Sp. No., Act X, 36; *Hari Krishna Rai* v. *Babu*, 1 W. R., 5; *Ram Chandra Datta* v. *Romesh Chandra Datta*, 2 W. R., Act. X, 47; *Ikram* v. *Bahuran*, 2 W. R., Act X, 69; *Ghura Singh* v. *Otar Singh*, 4 W. R., Act X, 15; *Magno Mayi Debi* v. *Hara Chandra Raut*, 6 W. R., Act X, 27; *Kunda Misra* v. *Ganesh Singh*; 6 B. L. R., App., 120; 15 W. R., 193.) But the production of a pottah of date subsequent to the Permanent Settlement, not inconsistent with the inference that it is a continuance of a former state of things, will not interfere with or defeat the presumption of uniform payment from the Permanent Settlement. (*Krishna Mohan Ghosh* v. *Ishan Chandra Mitra*, 4 W. R., Act. X, 36; *Lachmi Narain Saha* v. *Kuchil Kant Rai*, 6 W. R., Act X, 46; *Karunamayi Dasi* v. *Shib Chandra De*, 6 W. R., Act X, 50; *Grish Chandra Basu* v. *Kali Krishna Haldar*, 6 W. R., Act. X, 58; *Ram Chandra Datta* v. *Jogesh Chandra Datta*, 19 W. R., 353; *Piari Mohan Mukharji* v. *Kailash Chandra Bairagi*, 23 W. R., 58.) If the tenant cannot show that the pottah is confirmatory of a previous holding, he is not entitled to the benefit of the presumption. (*Jainuddin* v. *Purna Chandra Rai*, 8 W. R., 129.) When a tenant sets up an adverse proprietary right to his landlord, he is not entitled to the benefit of this presumption. (*Bissonath Rai* v. *Bhairab Singh*, 7 W. R., 145); but the fact of a raiyat having alleged that he held a *mokarari* tenure, will not disentitle him to the benefit of this presumption. (*Chamarni Bibi* v. *Ainulla Sirdar*, 9 W. R., 451.) The presumption will not arise on the face of a decree declaring the raiyat's holding to be liable to enhancement. (*Rakhal Das Basu v. Ghulam Sarwar*, 2 W. R., Act X, 69; *Udai Narain Sen* v. *Tarini Charan Rai*, 11 W. R., 496; *Naffar Chandra Pal* v. *Poulson*, 19 W. R., 175.)

Proof of payment necessary to raise presumption.—The tenant must give strict proof of a uniform payment of rent for twenty years immediately preceding the commencement of the suit. This is a matter which should not be decided in his favour on mere inference. (*Rajnarain Chaudhri* v. *Atkins*, 1 W. R., 45; *Mahmuda Bibi* v. *Haridhan Khalifa*, 5 W. R., Act X, 12; *Ram Kishor Mandal* v. *Chand Mandal*, 5 W. R., Act X, 84; *Prem Sahu* v. *Niamat Ali*, 6 W. R., Act X, 90; *Sham Lal Ghosh* v. *Baistab Charan Mazumdar*, 7 W. R., 407. But see *Radhanath Sirkar* v. *Binod Pal*, 3 W. R., Act X, 151.) It is not necessary that the tenant should prove payment of rent at a uniform rate for every year of the twenty, immediately before the institution of the suit, provided that the proof of payment extends over the twenty years. (*Kamal Lochan Rai* v. *Zamiruddin Sirdar*, 7 W. R., 417; *Katyani Debi* v. *Sundari Debi*, 2 W. R., Act X, 60; *Haranath Rai* v. *Chitramani Dasi*, 3 W. R., Act X, 122; *Gobinda Karmakar* v. *Kumudnath Bhartacharji*, 3 W. R., Act X, 148; *Tarini Kant Lahiri* v. *Kali Mohan Sarma*, 3 W. R Act X, 123; *Foschola* v. *Hara Chandra Basu*, 8 W. R., 284;

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Rash Behari Ghosh v. *Ram Kumar Ghosh*, 22 W. R., 487.) Proof of uniform payment up to the date of the suit is not necessary in a case in which the landlord refuses to take rent for a few years before the suit. (*Gyaram Datta* v. *Guru Charan Chatarji*, 2 W. R., Act X, 59.) It is not necessary that the tenant should show that he has paid the exact amount of rent in each year. It is not uniformity in the amount actually paid that is required to raise the presumption, but only uniformity in the rate agreed upon. (*Gopal Chandra Basu* v. *Mathur Mohan Banarji*, 3 W. R., Act X, 132; *Moran & Co.* v. *Ananda Chandra Mazumdar*, 6 W. R., Act X, 35; *Radha Gobinda Rai* v. *Kyamatullah Talukdar*, 21 W. R., 401.) The payment of a small illegal cess will not deprive a tenant of the benefit of the presumption. (*Samiruddin Lashkar* v. *Haranath Rai*, 2 W. R., Act X, 93; *Dwarkanath Singh Rai* v. *Naba Kumar Basu*, 20 W. R., 270.) It is quite possible that a raiyat may not have paid his rent regularly, in which case there would be a variation in the amount of rent as shown by the receipts. If this kind of variation were to be the test, no raiyat would be safe, and the object of the law would be frustrated. (*Shama Charan Kundu* v. *Dwarkanath Kabiraj*, 19 W. R., 100.) On the other hand, the amount of rent paid is not conclusive evidence of the amount of rent at which land is held, and may be rebutted by showing that the rent is greater or less. (*Anandamayi Dasi* v. *Sarnamayi*, 6 W. R., Act X, 83.) To entitle a raiyat to protection from enhancement, it is necessary for him to prove, not that a uniform rate of rent has been collected, but that the rate of rent has not been varied at any time within twenty years prior to the institution of the suit. (*Shama Charan Kundu* v. *Dwarkanath Kabiraj*, 19 W. R., 100; *Ahmad Ali* v. *Ghulam Ghaffur*, 11 W. R., 432; *Moran & Co.* v. *Ananda Chandra Mazumdar*, 6 W. R., Act X, 35.) An unexplained and immaterial variation of one anna, or of one rupee in sixty, will not affect the question of uniform payment of rent. (*Mansur Ali* v. *Banu Singh*, 7 W. R., 282; *Ananda Lal Chaudhri* v. *Hills*, 4 W. R., Act X, 33.) Nor will any trifling difference in *jama* affect it. (*Ilahi Baksh* v. *Rup Chand Teli*, 7 W. R., 284; *Ramratan Sirkar* v. *Chandramukhi Debi*, 2 W. R., Act X, 74; *Haranath Rai* v. *Amir Biswas*, 1 W. R., 230; *Gopal Chandra Basu* v. *Mathura Mohan Banarji*, 3 W. R., Act X, 132.) Neither will an abatement of rent on account of diluvion (*Reazunnissa* v. *Tukun Jha*, 10 W. R., 246), nor on account of lands rendered unculturable by the overflow of a river. (*Radha Gobind Rai* v. *Kyamatullah Talukdar*, 21 W. R., 401.) The change of sicca rupees into Company's rupees (the sicca rupee exceeding the Company's rupee by 1 anna 5 cowries and 1 krant) is no proof of any real change in the rate of rent. (*Kali Charan Datta* v. *Sashi Dasi*, 1 W. R., 248; *Tara Sundari Barmonya* v. *Sibeshwar Chatarji*, 6 W. R., Act X, 51; *Katyani Debi* v. *Sundari Debi*, 2 W. R., Act X, 60; *Watson & Co.* v. *Nanda Lal Sirkar*, 21 W. R., 420.) The difference between Rs. 11-13 and Rs. 13-4 was, however, held sufficient to destroy the presumption of a uniform payment of rent. (*Bisseshwar Chakrabarti* v. *Uma Charan Rai*, 7 W. R., 44.) A decree declaring a tenancy liable to enhancement rebuts the presumption, even though the enhanced rent has never been collected under it. (*Rakhal Das Basu* v. *Ghulam Sarwar*, 2 W. R., Act X, 69; *Naffar Chandra Pal* v. *Poulson*, 19 W. R., 175; *Durga Charan Chatarji* v. *Doyamayi Dasi*, 20 W. R., 243.) It may be observed that there is a slight change from the old law in the wording of this presumption. Under the old law, holding at a fixed rent gave rise to the presumption. Now, holding at a fixed rent, or fixed rate of rent, gives rise to the presumption.

Proviso to sub-section (2).—The Select Committee on the Tenancy Bill explained in their report, presented on the 14th March, 1884, that the Local

Government intended to introduce into the Bengal Council a Bill establishing a registration system of the nature referred to. The Bill was subsequently framed and introduced into Council, but ultimately abandoned on the ground that the zamindars did not want it. (See Proceedings of Bengal Council of the 27th November 1886.)

Sub-section (3). Effect of division or consolidation of holdings.— This sub-section is the result of numerous rulings of the High Court to this effect, which it seems unnecessary to reproduce here. (See *Sukhimoni Haldar* v. *Ganga Gobinda Mandal*, W. R., Sp. No., Act X, 126 ; *Ram Kumar Mukharji* v. *Raghab Mandal*, 2 W. R., Act X, 2 ; *Kenaram Mallik* v. *Ram Kumar Mukharji*, 2 W. R., Act X, 17; *Hills* v. *Hara Lal Sen*, 3 W. R., Act X, 135 ; *Khoda Newaz* v. *Nabo Krishna Raj*, 5 W. R., Act X, 53 ; *Raj Kishor Mukharji* v. *Hurihar Mukharji*, 10 W. R., 117 ; *Kashinath Lashkar* v. *Bama Sundari Debi*, 10 W. R., 429 ; *Sudhamukhi Dasi* v. *Ram Gati Karmakar*, 20 W. R., 419.) We would, however, draw attention to the following. Though the mere division of a raiyat's holding among his heirs does not destroy the continuity of his holding, yet the default of one shareholder will vitiate the tenure of all, and give the landlord a right of enhancement (*Hills* v. *Besharath Mir*, 1 W. R., 10), and if the rent of one share is enhanced, the rent of the whole tenancy is liable to enhancement. (*Sarat Sundari Debi* v. *Ananda Mohan Sarma*, I. L. R., 5 Calc., 273 ; 4 C. L. R., 448.) If it be found that one of the holdings, constituting a tenure has been created, since the Decennial Settlement the tenant cannot ask for the benefit of the presumption in respect of the rest only. (*Maula Baksh* v. *Jadunath Sadukhan*, 21 W. R., 267.) But the alienation of a portion of a permanent tenure by one of several co-tenure-holders will not work a forfeiture of the whole tenure. (*Dassorathi Hari Chandra Mahapattra* v. *Ram Krishna Jana*, I. L. R., 9 Calc., 526.) A temporary arrangement among joint owners, by which one of their number is allowed to hold a certain portion of the joint property on payment of a certain sum of money, does not convert the occupier into a raiyat holding at a fixed rent, or entitle him to the benefit of the presumption under sec. 4, Act X of 1859. (*Raghuban Tewari* v. *Bishnu Datta Dhobi*, 2 W. R., Act X, 92.) Additional rent for additional land, and an abatement of rent in consequence of diluvion do not prove alteration of the rate of rent or affect a raiyat's right to claim the benefit of the presumption arising from a twenty years' uniform payment of rent. (*Samiruddin Lashkar* v. *Haranath Rai*, 2 W. R., Act X, 93 ; *Reazunnissa* v. *Tukan Jha*, 10 W. R., 246.)

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent, or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

This is in accordance with several rulings of the High Court under the old law. (See *Inayatullah* v. *Ilahi Baksh*, W. R., Sp. No., Act X, 42 ; *Jumaut Ali Shah* v. *Chattardhari Sahi*, 16 W. R., 185 ; *Tara Chandra Banarji* v. *Amir Mandal*, 22 W. R., 394 ; *Altab Bibi* v. *Jugal Mandal*, 25 W. R., 234.)

Alteration of rent on alteration of area.

52. (1) Every tenant shall—

Alteration of rent in respect of alteration in area.
Sec. 18, Act X. 1859; sec. 19, Act VIII. B.C., 1869.

(*a*) be liable to pay additional rent for all land proved, by measurement, to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made ; and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding ;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area ; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in

respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

Alterations in law made by sub-section (1).—The provisions of sub-section (1) make considerable changes in the law. Formerly, an occupancy-raiyat could always claim abatement on the ground of the area of his land having been diminished by diluvion or otherwise. (Sec. 19, Act VIII, 1869, B. C.; sec. 18, Act X, 1859.) The case of diluvion was not left to fall within the case of the quantity of land being proved by measurement to be less than the quantity of land for which rent was previously paid. But the case of alluvion was not similarly provided for in the enhancement section, and it was, therefore, contended that it was not intended to fall within the case of land being proved by measurement to be more, but to be governed by cl. (1), sec. 4, Reg. XI of 1825. Hence, while a tenant could always claim abatement of rent on account of diluvion, a landlord could only assess accretions to a tenant's *jote* when he could show that he was entitled to do so by established usage or special agreement. (*Jagat Chandra Datta* v. *Panioty*, 6 W. R., Act X, 48; *Gopal Lal Thakur* v. *Kumar Ali*, 6 W. R., Act X, 85; *Jagat Chandra Datta* v. *Panioty*, 8 W. R., 427, in review; 9 W. R., 379; *Ramnidhi Manjhi* v. *Parbati Dasi*, I L. R., 5 Calc., 823; *Brajendra Kumar Bhumik* v. *Upendra Narain Singh*, I. L. R., 8 Calc., 706; *Ghulam Ali Chaudhri* v. *Kali Krishna Thakur*, 8 C. L. R., 517; I. L. R., 7 Calc., 479; *Hara Sundari Dasi* v. *Gopi Sundari Dasi*, 10 C. L. R., 559.) This is now changed, and the law is now made the same for both landlord and tenant, and in the case both of alluvion and diluvion. Land proved by measurement to be in excess of the area for which rent has been previously paid, evidently now includes land gained by alluvion, as well as land gained in any other way; while a deficiency proved by measurement to exist in the area for which rent has been previously paid, evidently includes land lost by diluvion as well as otherwise. A further change made by this sub-section is, that it is no longer necessary, as under the old law, to issue a notice to the tenant before suing him for additional rent on the ground of an increase in the area of the land held by him. Notices of enhancement are not required by this Act in any case, and additional rent for excess of area in the subject of the tenancy is not enhanced rent.

Sub-section (1), clause (a). Increase in area.—Under the old law it had been held, that when the area of a tenant's holding was increased by alluvion, the increment accreted to the tenancy, and the tenant had a right to continue in occupation of it, though he was liable to pay additional rent for it. (*Gobind Mani Debi* v. *Dinobandhu Shaha*, 15 W. R., 87; *Gopi Mohan Majumdar* v. *Hills*,

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5 C. L. R., 33; *Atimullah* v. *Sahibullah*, 15 W. R., 149; *Bhaghobat Prasad Singh* v. *Durga Bijai Singh*, 8 B. L. R., 73; 16 W. R., 95.) But in one case (*Zahirudin Paikar* v *Campbell*, 1 W. R., 57), it was said that cl. 1, sec. 4, Reg. XI of 1825, referred only to under-tenants intermediate between the zamindar and the raiyat, and to *khudkasht* and other raiyats who possess some permanent interest in their land, and not to tenants from year to year, while in another case it was broadly laid down that there is "no right of accretion by which a raiyat is entitled to claim under the law of the country." (*Finlay, Muir & Co.* v. *Gopi Kristo Gossami*, 24 W. R., 404.) Similarly, when, on a tenant's land being measured, he is found to be in possession of a greater quantity of land than that for which he has been paying rent, and the excess lies within the boundaries of the land originally leased to him, it has been held that he is not a trespasser as regards the excess land, and that the landlord cannot eject him from it, but can only make him pay additional rent for it. (*Bipro Das De* v. *Sakirmani Dasi*, W. R., Sp. No., Act X, 38; *Saudamini Dasi* v. *Guru Prasad Datta*, 3 W. R., 14; *Gopinath Mukharji* v. *Ram Hari Mandal*, 9 W. R., 476; *Ahmad Hossein* v. *Bandi*, 15 W. R., 91; *Pran Krishna Bagchi* v. *Monmohini Dasi*, 17 W. R., 34.) But when the increase in area is due to a tenant having encroached on land belonging to his landlord, which is not part of the land originally leased to him, the case is different. According to Sir Barnes Peacock, in such a case the tenant, as regards the excess land, is a trespasser, and the landlord's only course is to eject him. (*Rasham Bibi* v. *Bissonath Sirkar*, 6 W. R., Act X, 57; *DeCourcy* v. *Meghnath Jha*, 15 W. R., 157.) In subsequent cases, however, it was held that the landlord was entitled to treat him either as a trespasser or as a tenant, as he thought fit. (*David v. Ramdhan Chatarji*, 6 W. R., Act X, 97; *Rajmohan Mitra* v. *Guru Charn Aich*, 6 W. R., Act X, 106; *Sham Jha* v. *Durga Rai*, 7 W. R., 122; *Ghulam Ali* v. *Gopal Lal Thakur*, 9 W. R., 65.) This is, of course, the present law (sec. 157). But in one case it was laid down that if the tenant's tenancy was permanent, or he had a right of occupancy, he could not be ejected from any lands he had added to his tenancy by encroachment; but when the rent was re-adjusted, these lands might be brought into calculation. (*Guru Das Rai* v. *Issar Chandra Basu*, 22 W. R., 246.) In the same case it was said: "We think the true presumption as to encroachments made by a tenant, during his tenancy, upon the adjoining lands of his landlord is, that the lands so encroached upon are added to the tenure, and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared, by some act done at the time, that the tenant made the encroachment for his own benefit." In a later case, it was further laid down that when a tenant, during his tenancy, encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit, but for that of his landlord; and if he has acquired a title against the third person by adverse possession, he has acquired it for his landlord, and not for himself. (*Naddiar Chand Shaha* v. *Meajan*, I. L. R., 10 Calc., 820.)

Sub-sec. (1), clause (b). Abatement of rent on account of decrease of area.—Under the old law, all classes of tenants were entitled to abatement of rent on the ground of a diminution in the area of the land forming the subject of their tenancy. Thus, it was held that a patnidar or other lease-holder can sue for abatement (*Hara Krishna Banarji* v. *Jai Krishna Mukharji*, 1 W. R., 299; *Prasannamayi Dasi* v. *Sundar Kumari Debi*, 2 W. R., Act X, 30); and so can a *hauladar*

(*Kamala Kant Das* v. *Pogose*, 2 W. R., Act X, 65). A tenant, with or without a right of occupancy, is entitled to abatement of rent for land washed away, unless precluded by the terms of his kabuliyat from claiming that abatement. (*Inayatullah* v. *Ilahi Baksh*, W. R., Sp. No., Act X, 42; *Raghunath Mandal* v. *Jagatbandhu Basu*, 8 C. L. R., 393.) The right to claim abatement passes to a purchaser on a sale of the tenure. (*Kali Prasanna Rai* v. *Dhananjai Ghosh*, I. L. R., 11 Calc., 625.) A tenant is entitled to a deduction for lands washed away (*Inayatullah* v. *Ilahi Baksh*, W. R., Sp. No., Act X, 42; *Savi* v. *Abhoy Nath Basu*, 2 W. R., Act X, 28; *Kali Prasanna Rai* v. *Dhananjai Ghosh*, I. L. R., 11 Calc., 625); for lands taken up for a road, a railway, or any public purpose (*Dina Doyal Lal* v. *Thakru Kunwar*, 6 W. R., Act X, 24; *Ram Narain Chakrabarti* v. *Palin Bihari Singh*, 2 C. L. R., 5; *Prasannamayi Dasi* v. *Sundar Kumari Debi*, 2 W. R., Act X, 30; *Watson & Co.* v. *Nistarini Gupta*, I. L. R., 10 Calc., 544; *Uma Sankar Sirkar* v. *Tarini Chandra Singh*, I. L. R., 9 Calc., 571); or for land resumed by Government as *chakeran* (*Hara Krishna Banarji* v. *Jai Krishna Mukharji*, 1 W. R., 299). He can also claim an abatement of rent if dispossessed of any of his land by a title paramount to that of his lessor (*Gopananda Jha* v. *Gobinda Prasad*, 12 W. R., 109; *Braja Nath Pal* v. *Hira Lal Pal*, 10 W. R., 120; 1 B. L. R., A. C., 87); but not if the party dispossessing him has no title (*Rango Lal Singh* v. *Rudro Prasad*, 17 W. R., 386). A patnidar can sue for abatement of rent on the ground of fraud caused by the concealment from him of the existence of an intermediate tenure created by the zamindar. (*Shukar Ali* v. *Amala Ahalya*, 8 W. R., 504.) A tenant has been held entitled to abatement of rent in consequence of land being taken up for a railway, in spite of a clause in his kabuliyat to the effect that in no case could he claim a reduction of rent (*Watson & Co.* v. *Nistarini Gupta*, I. L. R., 10 Calc., 544), and for land taken up for public purposes, notwithstanding a provision in his kabuliyat that he would make no objection on the score of diluvion or any other cause to pay the rent fixed. (*Uma Sankar Sirkar* v. *Tarini Chandra Singh*, I. L. R., 9 Calc., 571.) But in certain cases, tenants have been held not to be entitled to an abatement of rent notwithstanding a diminution in the area of the lands held by them. Thus, it has been said that the plea of the quantity of land being less than that mentioned in the pottah cannot avail a raiyat, if he knew the land for which he agreed to pay rent (*Tripp* v. *Kali Das Mukharji*, W. R., Sp. No., Act X, 122); and in a case in which a portion of certain land held under a patni, was taken up by Government under the Land Acquisition Act and the zamindar having declared that he would allow no abatement of rent, the patnidar was allowed to appropriate the whole of the compensation, it was held, on the patni being sold under Reg. VIII of 1819 with notice of the amount of the original rent, that the purchaser was not entitled to any abatement of rent, as he must be presumed to have had notice of the proceedings under the Land Acquisition Act. (*Piari Mohan Mukharji* v. *Aftab Chand*, 10 C. L. R., 526.) Then, though a pottah provided for an abatement of the defendant's rent, if, on measurement, the land was found to be less than 145 bighas, yet it was held that if defendant came to be in possession of less quantity by his own default, and not that of his lessor, the mere fact of the defendant being in possession of less than 145 bighas would not entitle him to an abatement. (*Sitanath Basu* v. *Sham Chand Mitra*, 17 W. R., 418.) In one case it was said that it was doubtful whether the proprietor of a taluk created before the Permanent Settlement could claim abatement of rent on account of diluvion. (*Ram Charn Baisakh* v. *Lucas*, 16 W. R., 279.) The right to abatement of rent can be barred by limitation (*Prasanno Moyi Dasi* v. *Doya Moyi Dasi*, 22 W. R., 275), and the right of action, when diluvion takes

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place, accrues from the time when the plaintiff is compelled to pay the rent named in his pottah without the allowance of the abatement claimed by him. (*Barry* v. *Abdul Ali*, W. R., Sp. No., Act X, 64.) Many of these rulings will not be good law under the present Act. Under the provisions of cl. (*b*), a tenant is now entitled, in all circumstances, except in the case referred to in the latter part of the clause, to a reduction of rent on the ground of a proved deficiency in the area of the land originally leased to him ; and by sec. 178 (3) (*f*), nothing in any contract made after the passing of this Act (*i.e.*, the 14th March, 1885) can take away the right of a raiyat to apply for a reduction of rent under sec. 52. So far as a raiyat is concerned, then, he can only lose his rights under this section by the operation of the law of limitation.

Abatement of rent can be claimed in a suit for arrears.—The plea of abatement can be adjudicated on in a suit for arrears of rent (*Afsaruddin* v. *Sarashibala Debi*, Marsh., 558 ; *Din Dyal Lal* v. *Thakru Kunwar*, 6 W. R., Act X, 24 ; *Gaur Kishor Chandra* v. *Bonomali Chaudhri*, 22 W. R., 117); and as a claim for rent is a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he has to a deduction or abatement, notwithstanding that he has paid full rent for several previous years (*Mahtab Chand* v. *Chittro Kumari*, 16 W. R., 201. But see note to sec. 38, p. 88.)

Sub-section (2), clause (a).—In sub-sec. (2) are detailed the considerations by which Courts should be guided in deciding whether an increase of area is really a ground for increase in rent or not. In the case mentioned in cl. (*a*), where the rent is a consolidated rent for the entire tenure or holding, or where the tenant has been let into occupation of land within certain specified boundaries, there is no ground for holding the tenant liable to pay additional rent, even if, on measurement, it is found that the area of the land has been understated. The Rent Law Commission, in their Report (Vol. I, p. 142), give the following illustration of a case of this nature :—"A was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land, and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880, the land within these boundaries is measured and found to be 45 bighas. A is not liable to pay enhanced rent in respect of the eight additional bighas found to be within the boundaries stated in his lease." There are numerous rulings of the High Court under the old law to this effect. Thus, in *Abdul Mannah* v. *Barada Kant Banarji* (15 W. R., 394), it was said that in order to ascertain what land is actually leased, it is necessary to look to the boundaries mentioned in the lease, and not to the estimated area. (See also *Modihuddin Jowardar* v. *Sandes*, 12 W. R., 439 ; *Shib Chandra Mahniah* v. *Brajanath Aditya*, 14 W. R., 305 ; *Ishan Chandra Ghosh* v. *Pratap Chandra Rai*, 20 W. R., 224.) In a case recently decided by the Bombay High Court—*Virjivandas Madhav Das* v. *Mahomed Ali Khan Ibrahim* (I. L. R., 5 Bom., 208)—it has been said that in a suit for ejectment a mere mis-statement of the area of the land sought to be recovered ought not to be regarded as anything more than a "false demonstration." If the space is precisely defined by other description, the statement of its measurement in square yards may be treated as surplusage and of no consequence.

Sub-section (2), clause (b).—In many cases tenants agree to pay an addition to their total rent in consideration of the landlords agreeing not to re-measure their lands, it being tacitly understood that the tenant is holding more land than

the nominal area for which he pays rent. It would clearly be unfair in such a case, if a measurement be subsequently made, to allow enhancement on the ground of excess area in addition to the increase in total rental already agreed upon.

Sub-section (2), clause (c). Rulings under the old law.—The defendant having for more than sixty years occupied lands in excess of the number of bighas specified in the pottah, and the lands in question always having been deemed to form what was covered by the pottah, it was held that they had been occupied and enjoyed as the land included in the pottah since before the Decennial Settlement, and that the rent could not, therefore, be enhanced. (*Janaki Ballabh Chakrabartti* v. *Nabin Chandra Rai*, 2 W. R., Act X, 33.) When a permanent zimma taluk has been held at one rate of rent for more than twenty years, the terms of sec. 15, Act X of 1859, as well as the provisions of sec. 51, Reg. VIII of 1793, preclude the zamindar from assessing accretions to the parent taluk. (*Jagat Chandra Datta* v. *Panioty*, 8 W. R., 427.) In another case, the plaintiffs (patnidars) sued the defendants (darpatnidars) for arrears of rent. The defendants alleged that a part of the land had been taken up by the Government twenty years previously for the purposes of a railway, and they claimed an abatement on that ground. It was held, that the Limitation Act does not in terms prevent a defendant from setting up such defence; but that the great delay in this case, combined with other circumstances, disentitled the defendants to any relief in a Court of Equity. (*Ram Narain Chakrabartti* v. *Pulin Bihari Lal Singh*, 2 C. L. R., 5.) In a suit for abatement of rent, founded on an agreement that at a certain time the land should be measured, and if found less than the quantity named in the agreement, there should be an abatement of rent, it was found that the plaintiff had never required abatement, but had continued to pay the rent six years. It was, therefore, held that the suit was barred by limitation, the cause of action having arisen when the zamindar continued to take rent according to the quantity of land named in the agreement. (*Prasanna Mayi Dasi* v. *Doya Mayi Dasi*, 22 W. R., 275.) A decree for enhanced rent having been obtained, the zamindar agreed that the tenant should be allowed to hold a lease at a less rent for a certain number of years on certain conditions. After the expiration of the period fixed by the lease, he sued to recover rent at the rate declared payable by the enhancement-decree. It was, however, decided that the effect of the agreement was to suspend the decree, and in the absence of a provision in the lease for revival of the decree on the expiration of the term limited, the plaintiff must have recourse to the procedure laid down by the enhancement provisions of Act VIII (B. C.) of 1869, if he seek to recover a higher rent than that paid under the lease. (*Nabin Chandra Sirkar* v. *Gaur Chandra Saha*, 8 C. L. R., 161.)

Sub-section (2), clause (d).—It is obviously no ground for an alteration in rent that the nominal area of the land has increased or decreased owing to its being measured on a system different from that of the previous measurement. Such increase or decrease may be due to slight variations in the length of the pole, or the method of throwing it, or to the change from the rude native system of measurement to scientific measurements with chain and compass. If, when a raiyat was let into a plot of land with defined boundaries, the area was said to be a bigha, and the rent fixed at four rupees, it is obvious that to call that same field a bigha and five kottahs, because measured on a different system, and, therefore, to raise the rent to five rupees, is unfair. "What," says Sir Steuart Bayley, "the Courts have to consider is, whether the entire area was really previously considered or

not." (Proceedings, dated 27th February, 1885, Extra Supplement to *Government of India Gazette*, March 14th, 1885, p. 58.) (See also *Babun Mandal* v. *Shib Kumari Barmani*, 21 W. R., 404.)

Sub-section (3).—The terms of this sub-section lay down a definite rule for the assessment of excess areas of which tenants are found in possession. There has hitherto been much conflict in the rulings of the High Court on this point. (See *Ghulam Ali Thakur* v. *Gopal Lal Thakur*, 9 W. R., 65; *Gopal Lal Thakur* v. *Kumar Ali*, 6 W. R., Act X, 85; *Panioty* v. *Jagat Chandra Datta*, 9 W. R., 379; *Gobindamani Debi* v. *Dinabandhu Saha*, 15 W. R., 87; *Sharashwati Dasi* v. *Parbati Das*, 6 C. L. R., 362; *Ghulam Ali* v. *Kali Krishna Thakur*, I. L. R., 7 Calc., 479; 8 C. L. R., 517; *Laidley* v. *Bishnu Charan Pal*, I. L. R., 11 Calc., 553; *Churamani De* v. *Howrah Mills Company*, I. L. R., 11 Calc., 697.)

Sub-section (4).—The rule prescribed in sub-sec. (4) is in accordance with the rule laid down by the High Court in *Brajanath Pal* v. *Hira Lal Pal* (1 B. L. R., A. C., 87; 10 W. R., 120).

Payment of Rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

There was no provision to this effect either in Act X of 1859 or Act VIII of 1869 (B. C.) Under sec. 2 of these Acts, the instalments in which a raiyat's rent was to be paid had to be specified in his pottah. If not so specified, they were regulated by established usage (sec. 20, Act X, 1859; sec. 21, Act VIII, B. C., 1869), which meant the established usage in the pargana, and not the established usage between the parties. (*Chaitanno Chandra Rai* v. *Kedarnath Rai*, 14 W. R., 99.) The provisions of the present section are also subject to agreement or "established usage," that is, not the practice previously prevailing between the parties, but the established usage of the pargana in which the property is situated (*Hira Lal Das* v. *Mathura Mohun Rai*, I. L. R., 15 Calc., 714). So, where it can be proved that there is an agreement for, or usage of, paying rent by monthly instalments, this usage will prevail: where there is an agreement for payment in monthly instalments, the raiyat is bound by its terms, notwithstanding that the landlord has not strictly enforced them previously. (*Piari Mohan Mukharji* v. *Braja Mohan Basu*, 22 W. R., 428.) The landlord cannot, however, sue for arrears oftener than once in three months (sec. 147), nor is interest recoverable for any time that may intervene between the date of the instalment and the expiration of the quarter in which it falls due (sec. 67); so that where the payment of rent by monthly instalments is established by local usage, there is practically no penalty for withholding the rent up to the end of each quarter. "Established usage," therefore, can have no effect, except where the usage is, that the rent should be payable less often than once in three months. It is to be remembered that in sec. 3 (5) it is provided, that "in secs. 53 to 68, both inclusive, rent includes also money recoverable under any enactment for the time being in force as if it was rent." Hence, sums payable under the Cess Act (IX of 1880, B. C.) are payable in four quarterly instalments, unless there be an agreement or established usage to the contrary.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place for payment of rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Sub-section (1).—There was no rule on this point under the old law ; but in *Kashi Kant Bharttacharji* v. *Rohini Kant Bharttacharji* (I L. R., 6 Calc., 325), it was held by a Full Bench that "rent becomes due at the last moment of the time which is allowed to the tenant for payment." The present rule is analogous to the rule as to the payment of Government revenue.

Sub-section (2).—It is to be remembered that as a debtor has to seek out his creditor and pay what is due, so a tenant must not wait till the rent is demanded of him, but must go to his landlord, and pay it on the day that it falls due ; and when a debtor pleads tender of payment as a ground for not being saddled with interest, it is for him to prove such tender. (*Sharat Sundari Debi* v. *The Collector of Mymensingh*, 5 W. R., Act X, 69.) Payment to one of several joint proprietors is payment to all. (*Udit Narain Singh* v. *Hudson*, 2 W. R., Act X, 15 ; *Muktakeshi Dasi* v. *Kailash Chandra Mitra*, 7 W. R., 493.) Payment by a tenant under the landlord's directions to another, or for a specified purpose, of a sum equivalent to the amount claimed as rent is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent. (*Jai Koer* v. *Furlong*, W. R., Sp. No., Act X, 112.) Payment of rent to a third party does not prove that the relation of landlord and tenant does not exist between defendant and plaintiff, when such payment has been made to that party, not as landlord, but under a deed of assignment from plaintiff's father. (*Krishna Dhan Pandit* v. *Mahomed Naki*, 10 W. R., 495.) When a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority to make the payment, *e. g.*, the payment of Government-revenue to save the estate from sale. (*Hills* v. *Uma Mayi Barmani*, 15 W. R., 545.) An auction-purchaser with notice of a payment in advance made by the tenant to the former proprietors of rent due for a period subsequent to the date of purchase is bound by such payment. (*Ram Lal Saha* v. *Jugendro Narain Rai*, 18 W. R., 328.) Payment by a joint tenant of rent due by himself and others without demand, suit, or other effectual proceeding for the recovery of the rent is voluntary and officious, and cannot be recovered by a suit for contribution. (*Lakhi Kant Das* v. *Shib Chandra Chakrabartti*, 12 W. R., 462.)

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Sub-section (2), proviso.—The privilege of remitting land-revenue by postal money orders was extended to all the districts of Bengal from the 1st April, 1887. The system, according to the Board of Revenue, has worked well, and, from the 1st April, 1888, was extended so as to include remittances of zamindari dâk cess, as well as land-revenue and road and public works cess. It has also been ruled that other public demands may be paid at the option of the payer by postal money orders, provided the particulars given are sufficient for the department concerned. A proposal to extend the system to the payment of rent under the Tenancy Act is under the consideration of Government. The system has recently been sanctioned as an experimental measure in the districts of the Burdwan Division, and it is understood that it will shortly be put in force.

Sub-section (3).—A produce-rent, which is not paid when due, is an arrear as well as a money-rent in similar circumstances, and a suit for the money-value of the produce at the time when it ought to have been paid will lie as a suit for arrears of rent. (*Krishna Bandhu Bharttacharji* v. *Rotish Sheikh*, 25 W. R., 307.) An "arrear" under sec. 67 shall bear simple interest at the rate of 12 per cent. per annum from the expiration of the quarter in which it falls due.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

This rule is in accordance with the provisions of secs. 59 and 60 of the Indian Contract Act (IX of 1872), under which, however, the appropriation may be made by implication. (*Sangat Lal* v. *Baijnath Rai*, I. L. R., 13 Calc., 164.) When neither debtor nor creditor makes any appropriation, under sec. 61 of the Contract Act, the payment is to be credited to the earliest debt, whether it is or is not barred by limitation. The payment of the rent of any particular year affords good *primâ facie* grounds for supposing that the rent of the previous year has been paid (*Sarat Sundari Debi* v. *Brodie*, 1 W. R., 274); but it is not conclusive evidence that the rents for past years have been paid. In another case, it has been said that the payment in each year must be presumed to be for the current year till the contrary is shown; and the surplus payments must *primâ facie* be presumed to be for past, and not for subsequent, years. (*Taramoni Dasi* v. *Kali Charan Sarma*, W. R., Sp. No., 1864, Act X, 14. See also *Ahmuty* v. *Brodie*, W. R., Sp. No., Act X, 15; *Sarnamayi* v. *Singhrup Bibi*, W. R., Sp. No., Act X, 134; *Shambhu Chandra Shaha* v. *Barada Sundari Debi*, 5 W. R., 45.) In a suit by a landlord against his tenant for arrears due for a portion of the year 1283, the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time

for which the arrears were demanded, but swore that they were payments due on account of previous years. It was held, that the defendant having pleaded payment was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed. (*Saifan* v. *Rudra Sahai*, I. L. R., 7 Calc., 582.)

Receipts and Accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Sub-section (1).—An agent duly authorized in writing under sec. 187 (3), as well as the landlord himself, may sign this receipt. If there be more than one landlord, the receipt must be signed by all of them, or by their common agent (sec. 188), or common manager, if there be one appointed under sec. 95. Every tenant—which term includes a tenure-holder as well as a raiyat—is entitled to a separate receipt for each instalment paid by him. The same form of receipt may, of course, be used for several payments, if the tenant brings back his half of the receipt. Under cl. (*c*), art. 15 of Sched. II of Act I of 1879, receipts granted for any payment of rent by a cultivator on account of land assessed to Government revenue are exempt from stamp-duty. Receipts granted by *lakhirajdars* to their tenants, if for more than Rs. 20, should, therefore, be stamped.

Sub-section (3).—Among the particulars specified in Sched. II to be mentioned in the receipt are, it is to be observed, the tenant's name, the instalment, and the year to which each payment is credited. Under sub-sec. (4), the omission of these particulars makes it incumbent on the Court to presume the receipt to be an acquittance in full.

By Notification dated 30th January, 1888, published at p. 83 of the *Calcutta Gazette* of February 1st, 1888, Government has, under the proviso to sub-sec. (3),

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sanctioned a special form of receipt for certain areas now under settlement in the Rajshahye District.

Receipts how to be proved in evidence.—Receipts should be attested or proved by some oral evidence. But a tenant cannot be expected to summon all the gomastas of his zamindar for the past twenty or thirty years to attest his dakhilas. He can, however, prove all dakhilas which have been given to him personally as well as any other witness. (*Rajeshwari Debi* v. *Shibnath Chatarji*, 1 W. R., Act X, 12.) A raiyat who puts in dakhilas to prove his case, is bound to prove them. Their admission as genuine is not to be presumed merely because they are not formally disputed by the landlord. (*Krittibash Mahanti* v. *Ramdhan Kharah*, 7 W. R., 526; *Ram Jadu Ganguli* v. *Lakhi Narain Mandal*, 8 W. R., 488; *Ganga Narain Das* v. *Sarada Mohan Rai*, 12 W. R., 30; *Dumaine* v. *Uttam Singh*, 13 W. R., 462.) The evidence of a tenant deposing to the genuineness of dakhilas produced by him, if not rebutted, is legally sufficient to prove them. (*Madhub Chandra Chaudhri* v. *Pramatha Nath Rai*, 20 W. R., 264.)

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Sub-section (2).—It would seem as if the landlord in the statement of account must specify the particulars mentioned in Sched. II. There is no saving clause, as in sec. 56 (3). However, he is not liable to any penalty, unless he neglects to specify these particulars without reasonable cause. (See sec. 58 (2).)

Fees payable to Government under this section how to be credited — Landlord's fees under sec. 57 (2) of the Bengal Tenancy Act, which are payable to Government as landlord, are miscellaneous revenue receipts, and should, therefore, be realized in cash and included by Collectors in Table V of their Return No. X under the head (*g*—1): "Fees under Act VIII of 1885." (Board of Revenue's C. O. No. 2 of September, 1886.)

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.
Sec. 10, Act X, 1859.
Sec. 11, Act VIII, B.C., 1869.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Fines under sub-section (3) must be imposed by the Magistrate.—It is not clear by whom the fine mentioned in sub-sec. (3) should be imposed; but the Legal Remembrancer has expressed an opinion that from the word "punished," occurring in the sub-section, it would appear that the fine should be imposed by the Magistrate. (Legal Remembrancer's No. 811, of September 4th, 1888, to the Board of Revenue.)

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

Local Government to prepare forms of ceipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

It is not necessary that the forms of receipt prepared and kept for sale at sub-divisions under the provisions of this section should be used, nor yet that the

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landlords should use printed forms of receipt. (See Government letter No. 1452 T. R., dated 7th September, 1885, published in the *Calcutta Gazette*, 16th September, 1885.) But as receipts must be in counterfoil, and as the omission of any of the particulars specified in Sched. II, which the landlord can give, will raise the presumption that a receipt which does not contain those particulars is an acquittance in full for rent due up to date, and as the failure to prepare a counterpart or copy will render him liable to a penalty of Rs. 50 under sec. 58, cl. (3), it will probably be the safest course for landlords to use printed receipt-books in the form supplied by Government for sale. Whether they use forms printed at private presses, or those sold by Government, is immaterial. Forms of receipt are now sold by Government at the rate of 6 ans. per 100. Not less than 25 are sold at a time. A discount of half an anna in the rupee on purchases amounting to Rs. 6 and upwards is allowed to licensed stamp-vendors, who are obliged to sell the forms at the above rate. Bound books of receipt-forms are, under no circumstances, to be broken up. (Government Circular No. T. R. R., dated 24th October, 1885.)

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land-Registration Act, 1876,* as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor, manager or mortgagee.

* VII (B.C.) of 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

The provisions of this section must be read along with those of sec. 78, Act VII of 1876 (B. C.), which say that "no person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act; and no person, being liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property."

The provisions of the first portion of this section are similar to those of sec. 79, Act VII of 1876 (B.C.), except that this section allows the receipt of the authorized agent (sec. 187) of a proprietor, manager, or mortgagee to be a sufficient indemnity to persons paying rent to him, as well as the receipt of the proprietor, manager, or mortgagee himself. The latter portion of the first clause of this section, however, goes beyond the provisions of sec. 79, Act VII of 1876

(B. C.), and absolutely prohibits the defendant, in a suit for arrears of rent brought by the proprietor, manager, or mortgagee of an estate registered under the Act, from pleading that the rent is due, not to the plaintiff, but to a third person. Under the old law, the High Court held that registration of land under Bengal Act VII of 1876 is not only not conclusive proof, but no evidence at all, upon the question of title of a proprietor so registered, and that such registration does not relieve a plaintiff from the onus of proving his title to land claimed by him. (*Ram Bhushan Mahto* v. *Jebli Mahto*, I. L. R., 8 Calc., 853. See also *Saraswati Dasi* v. *Dhanpat Singh*, I. L. R., 9 Calc., 431.) Again, in *Ram Krishna Das* v. *Harain* (I. L. R., 9 Calc., 517 ; 12 C. L. R., 141), it was held by the High Court, that the mere fact of a person being registered under the provisions of Act VII of 1876 (B. C.) as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it. In this case, the plaintiff, who was registered as owner of the land in respect of which he claimed rent, sued the occupier for such rent, but was only able to prove the fact that he was the registered owner, and was unable to show that the relation of landlord and tenant existed, or that he had a good title to the estate of which he was registered as owner. It was, accordingly, held that the suit had been rightly dismissed.

But all these rulings would seem to be set aside by the provisions of the present section. Now, if a proprietor is not registered under Act VII (B.C.) of 1876, and the defendant raises this plea, the suit must, under the provisions of sec. 78, Act VII (B. C.). of 1876, be dismissed. But if he is registered, the defendant cannot plead that he is the tenant of a third person ; and the plaintiff is, accordingly, entitled to a decree.

Deposit of Rent.

Operation of secs. 61 to 64 postponed till 1st February, 1886.—By a Supplemental Act (XX of 1885), the operation of the provisions of secs. 61 to 64 was postponed till the 1st February, 1886. The Act runs as follows :—

1. "Notwithstanding anything contained in the said notification :

(*a*) the provisions of secs. 61 to 64, both inclusive, and of Chapter XII of the said Act, except such of those provisions as confer powers to make rules, shall come into force on such date, not later than the first day of February, 1886, as the Local Government, after the passing of this Act, may, by notification in the local official Gazette, appoint in this behalf, or, if no date is so appointed, on the first day of February, 1886, and not before ;

(*b*) until those provisions come into force, the enactments specified in Sched. I annexed to the said Act shall, in so far as they relate to deposits of rent and distraint, continue in force, and all references to those provisions in other portions of the said Act shall, so far as may be, be read as if they were made to the corresponding provisions of the said enactments."

Application to deposit rent in Court.

Sec. 4, Act VI (B. C.), 1864. Sec. 46, Act VIII (B C.), 1869.

61. (1) In any of the following cases, namely :—

(*a*) when a tenant tenders money on account of rent, and the landlord refuses to receive it or refuses to grant a receipt ; for it ;

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(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf ; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made ; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it ;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant ; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

XIV of 1882.

This section makes a considerable change in the former law. Under sec. 4, Act VI of 1862 (B. C.), and sec. 46, Act VIII of 1869 (B. C.), a tenant could deposit rent in Court only when he had tendered the rent to his landlord and it had been refused, and a receipt in full had not been granted. (See *Krishna Protibar* v. *Alladini Dasi*, 15 W. R., 4.) But now he can also deposit it : (1) when he has reason to believe, owing to the rent having been refused, or a receipt withheld on a previous occasion, that the landlord will not receive and grant a receipt for it (cl. *b*) ; (2) when he cannot obtain the joint receipt of co-sharer landlords, and they have no common agent or manager (cl. *c*) ; and (3) when he entertains a *bonâ fide* doubt as to who is entitled to receive the rent (cl. *d*). Clause (*d*) has, no

doubt, been added to this section in consideration of the fact that, under sec. 474 of the Civil Procedure Code, tenants cannot compel their landlords to interplead with any persons other than persons making claim through such landlords. Further changes in the law are, that the Court receiving the deposit may now pay it away or retain it, pending the decision of a Civil Court—sec. 64, cl. (1), and may refund it to the depositor, if it is not paid away within three years' time.

Tender of rent when valid.—A raiyat's tender of payment to be valid must be made by the recognized tenant, and at the proper place, and to a person authorized to receive the same. (*Dulí Chand* v. *Meher Chand Sahu*, 8 W. R., 138; *Ishan Chandra Rai* v. *Ahsanullah*, 16 W. R., 79.) Tenants who have been in the habit of depositing the rent due to a landlord in his sole name are not justified, without receiving notice or order to that effect, in making the deposit in the name of that landlord and another. (*Rainey* v. *Nobo Kumar Mukharji*, 24 W. R., 128.) In making the tender, a mistake in the name of the taluk is an immaterial error, especially when there is no doubt that the talukdar is aware of the tender being made. (*Uma Charn Sett* v. *Hari Prasad Misra*, 10 W. R., 101.) The mere deposit of rent in the Collector's Office by the purchaser of an under-tenure in his own name and that of the registered tenant is not sufficient notice to the zamindar of such purchase, nor is the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant; but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered. (*Mritan Jai Sirkar* v. *Gopal Chandra Sirkar*, 2 B. L. R., A. C., 131; 10 W. R., 466.)

Limitation in case of deposit.—When a tenant has made a deposit of rent under this section, a suit for the recovery of rent due prior to that deposited must be brought within six months of the date of the service of the notice of the deposit, instead of within three years, as in other cases.—(Sched. III; Part I, art. 3.)

Deposit must be of rent due.—The deposit which is contemplated by this section is a deposit after the rents have become due. A tenant who deposited rent before it became due would not be entitled to claim the benefit of the special limitation. (*Turamani Kunwari* v. *Jiban Mandar*, 6 W. R., Act X, 99.) Where a zamindar had sold a patni for arrears of rent due in 1224, Mughee, the patnidar sued for the reversal of the sale, and deposited the rent for 1225. The sale was reversed, and the zamindar then sued for the rent of 1224, and was met with the objection that the suit should have been brought within six months from the date of the deposit of the rent of 1225. But the High Court held that this section did not apply, and that the zamindar was entitled to recover, as he had brought his suit within the three years allowed by law. (*Mohamed Shukurullah* v. *Rumya Bibi*, 7 W. R., 487.)

Deposit must include both interest and cesses.—The words, "*the full amount of the money then due*," show that the deposit must include both the amount of rent due as well as the interest (if any) due thereupon, and any cess due at the time of the deposit, which is recoverable as rent. But the words "the full amount of the money then due," as they occur in sec. 61, do not mean anything more than the words "what the tenant shall consider the full amount of rent due from him at the date of the tender to the zamindar," and have no relation whatsoever to the amount of rent justly due or justly

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payable, but only to such rent as the tenant at the time of the deposit considers to be the rent due and payable. (*Sirdhar Rai* v. *Rameshar Singh*, I. L. R., 15 Calc., 166.)

Sub-section (2).—The fee prescribed by Government under sub-sec. (2) is four annas for every such deposit of Rs. 25 or less, with an additional four annas for every Rs. 25 or part of Rs. 25 in excess : provided that in no case shall the fee exceed the sum of Rs. 5 (See Chap. VII, Rule 5, Government Rules under the Tenancy Act, Appendix I.) These fees are to be levied by Court-fee stamps.

The Board of Revenue has issued the following circulars on the subject of the fees on deposits of rents and on the application for permission to deposit the rent :

" The following instructions, to which the attention of all officers is invited, are issued under the authority of Government on the advice of the Legal Remembrancer :—

The provision of cl. 2, sec. 61 of the Bengal Tenancy Act, as to the fee payable on the deposit of rent, supersedes and cancels all previous provisions on the same subject. The Court-fee prescribed in Sched. II of the Court-fees Act, VII of 1870, as modified by the Government of India Notification No. 1070, dated 12th February, 1874, for deposits of rent not exceeding Rs. 15, is, therefore, no longer obligatory. The fee prescribed in the rules framed by the Local Government (Chap. VII, Rule 5) takes its place. A separate stamp on the application as well as a separate fee for the deposit is not required. The application under cl. 2, sec. 61, is accompanied with the fee when it is made on paper stamped to the required value under that section." (Board of Revenue's C. O. No. 5 of December, 1886, and Government of Bengal's Judl. Cir. 7 J of 18th January, 1887.)

" In continuation of the Board's Circular Order No. 5 of December, 1886, the following notification of the Government of India, in the Department of Finance and Commerce, remitting the fees payable on applications for deposit of rent under the Court-fees Act, 1870, is circulated for the information and guidance of District Officers concerned in the working of the Bengal Tenancy Act, VIII of 1885 :—

No. 4481, dated Simla, the 16th August, 1888.

Notification—By the Government of India, Department of Finance and Commerce.

In exercise of the powers conferred by sec. 35 of the Court-fees Act, VII of 1870, and in modification of the Notification No. 1070, dated the 12th February, 1874, issued in the Finance Department, the Governor-General in Council has remitted the fee payable under that Act on any application for the deposit of rent in respect of which a fee is paid under sec. 61 (2) of the Bengal Tenancy Act, VIII of 1885." (Board of Revenue's C. O. No. 12 of September, 1888.) See also High Court's C. O. No. 1, of 14th January, 1889.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (*c*) of that section, by the co-sharers to whom the rent is due ; and

in case (*d*) of that section, by the person entitled to the rent.

It has been said in *Sirdhar Rai* v. *Rameshar Singh* (I. L. R., 15 Calc., 166), that it would appear on a consideration of secs. 61 and 62 of this Act, that "if a verified petition is made to the Court, and if it contains the grounds under which an application under sec. 61 is authorized to be made, and if it also contains the particulars, which ought to be mentioned, the Court is bound to receive the rent and give a receipt to the tenant. The Court is not authorized at this stage of the proceeding, or at any subsequent stage, to enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit . . . . . There is no machinery whatsoever provided for the Court to enter into a judicial enquiry in connection with the matter of this deposit, nor is there any provision entitling the zamindar to come in and be heard, upon the subject. So far as the tenant is concerned, after the deposit is made and receipt granted, the Court is *functus officio*, and is not authorized to return the money to the tenant upon an application made by the zamindar."

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in

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some conspicuous place in the village in which the holding is situate ; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Service of notice.—The Local Government has directed that in cases (*a*), (*b*), and (*d*) of sec. 61, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or when the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. (See Chap. V, Rule 5, of Government Rules under the Tenancy Act.)

Payment or refund of deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections ; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Sub-section (2).—No rule has yet been made regarding the payment of a deposit of rent by postal money-order. It has been considered advisable before promulgating such a rule that the experiment of payment of Government revenue by this means should be tried.

Court-fees leviable on applications for the payment and return of deposits of rent.—The Government of India by its Notification No. 849 of the 16th February, 1883, circulated with High Court Circular No. 5 of the 18th July, 1883,

remitted all fees on applications for the payment of deposits of rent in cases in which the deposit does not exceed Rs. 25, and the application is made within three months of the date on which the deposit became payable to the applicant. But when the deposit exceeds Rs. 25, but is less than Rs. 50, or when the deposit exceeds Rs. 25, but the application has not been made within three months of the date on which the deposit became payable, the application for payment or for the return of the deposit will, if presented to a Civil Court other than a Civil Court of original jurisdiction, be subject to a Court-fee of 1 anna under para. 4, cl. (*a*), art. 1, Sched. II, Act VII of 1870; for an application for the payment of a deposit of rent is a case. (*Manohar Mukhopadhya* v. *Ishwar Kundu*, High Court miscellaneous case, No. 277 of 1887.) But when the deposit amounts to or exceeds Rs. 50, and in all cases in which the application is made to a principal Civil Court of original jurisdiction, the application for the payment or return of the deposit will be subject to a Court-fee duty of 8 annas, under para. 2, cl. (*b*), art. 1, Sched. II, Act VII of 1870. Several deposits can be withdrawn by one application (H.C. Circ. Orders, Ch. III, Rule 36, p. 46.

Arrears of Rent.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates, or occupancy-holding.

Grounds on which tenants can be ejected.—A permanent tenure-holder, a raiyat holding at fixed rates, and an occupancy-raiyat may be evicted for a breach of a condition of his lease (consistent with this Act), on breach of which he is under the terms of a contract between him and his landlord liable to be ejected—[Secs. 10, 18 (*b*) and 25 (*b*)]. But a permanent tenure-holder, if his lease has been made before the 1st November, 1885, may be ejected for a breach of a condition which is even inconsistent with this Act. An occupancy-raiyat may also, under sec. 25, cl. (*a*), be ejected for using his land in a manner which renders it unfit for the purposes of the tenancy. But neither a permanent tenure-holder, a raiyat holding at fixed rates, nor an occupancy-raiyat can be ejected for mere arrears of rent.

Under old law.—This is a considerable change on the old law. Under the former law, a permanent tenure-holder could be ejected for arrears of rent, if there was a condition to this effect in his lease. (*Jai Durga Debi* v. *Bolai Chand Kundu*, 2 Hay, 525; *Bularam Das* v. *Jogendra Nath Mallik*, 19 W. R., 349; *Mumtaz Bibi* v. *Grish Chandra Chaudhri*, 22 W. R., 376.) But the Courts very often declined to enforce this condition. (*Jan Ali Chaudhri* v. *Nityanand Basu*, 10 W. R., F. B., 12; *Kamla Sahai* v. *Ram Ratan Neogi*, 11 W. R., 201; *Duli Chand* v. *Meher Chand Sahu*, 12 B. L. R., 439; *Mothur Mohun Chaudhri* v. *Ram Lal Basu*, 4 C. L. R., 469; *Mahomed Amir* v. *Priag Singh*, I. L. R., 7 Calc., 566; *Duli Chand* v. *Raj Kishor*, I. L. R., 9 Calc., 88.) If, however, there was no clause in the lease entitling the landlord to eject for arrears, and if by the title-deeds or the custom of the country the tenure was transferable by sale the landlord could not eject

for arrears, but could only sell the tenure under sec. 59, Act VIII of 1869, or sec. 105, Act X of 1859, and sec. 4, Act VIII of 1865, B. C. As to raiyats, under sec. 21, Act X, 1859, and sec. 22, Act VIII of 1869 (B. C.), any raiyat was liable to be ejected for arrears of rent remaining due at the end of the agricultural year. Notwithstanding the provisions of these sections, the High Court, in the case of *Kristendro Rai* v. *Aena Bewa* (I. L. R., 8 Calc., 675 ; 10 C. L. R., 399), held that the provisions of sec. 59, Act VIII of 1869 (B. C.), also applied to any tenant having a transferable interest in his land, and, therefore, a landlord could not eject any such tenant for arrears of rent. But in *Fakir Chand* v. *Fouzdar Misra* (I. L. R., 10 Calc.. 547), Mitter, J., expressed a doubt as to the correctness of this view.

Under present law.—But now no tenant of the three protected classes above-mentioned can be ejected on the ground of arrears of rent, even if there be a clause in his lease empowering the landlord to eject him on this ground, for, under sec. 178 (1) (*c*), a tenant cannot before or after the passing of this Act make a contract with his landlord entitling the latter to eject him otherwise than under the provisions of this Act.

Tenures and holdings now hypothecated for the rent.—It was formerly a matter of dispute whether a tenure or holding was hypothecated for the rent or not. There are several early rulings in which it was held that a *bonâ fide* purchaser at a sale for arrears of rent has a preferential title over a purchaser at a prior sale in execution of a decree of the Civil Court. (*Gopal Mandal* v. *Subhudra Boistabi*, 5 W. R., 205 ; *Khubari Rai* v. *Raghubar Rai*, 2 W. R., 131 ; *Safarunnissa* v. *Sari Dhopi*, 8 W. R., 384 ; *Sadhan Chandra Basu* v. *Guru Charn Basu*, 15 W. R., 99.) There are, however, decisions to the contrary. (*Pranbandhu Sirkar* v. *Sarbosundari Debi*, 3 B. L. R., A. C. (note), 52 ; 10 W. R., 434 ; *Ram Baksh Chatlangia* v. *Hridoymani Debi*, 10 W. R., 446 ; *Tirthanand Thakur* v. *Paresmon Jha*, 13 W. R., 449 ; *Samariddin Khalifa* v. *Harish Chandra Karmokar*, 3 B. L. R., A. C., 49 ; 13 W. R., 451, note ; *Daulat Ghazi Chaudhri* v. *Manwar*, 15 W. R., 341 ; *Wahid Ali* v. *Sadik Ali*, 17 W. R., 417.) In these cases it was held that the produce of the land was hypothecated for the rent, but not the land itself. All these cases were reviewed by a Full Bench in *Sham Chand Kundu* v. *Brajanath Pal* (21 W. R., 94 ; 12 B. L. R., 484), in which it was laid down that a zamindar who had obtained a decree for arrears of rent of a transferable tenure was entitled to sell the tenure, and a person who had obtained a transfer of such tenure, which he had not registered, and could not show a sufficient reason for not registering was bound by the sale, and could not set up a title, which he had acquired by a previous sale. This was followed in *Rash Behari Bandopadhya* v. *Piarimohan Mukharji* (I. L. R., 4 Calc., 346), in which it was ruled that a decree for rent obtained by a landlord against his registered tenant rendered the tenure comprised in the decree liable for sale, although such tenure had passed into other hands than those of the judgment-debtor. But this would not enable the landlord, it was said, to do more than sell the tenure ; he could not hold the purchaser liable for arrears of rent, which had accrued before he became purchaser. Again, in *Chandra Narain Singh* v. *Krishna Chand Golicha* (I. L. R., 9 Calc., 855), in which a decree for arrears of rent of an under-tenure was obtained against a tenant, who became an insolvent, and the whole tenure became vested in the Official Assignee, on an application being made under secs. 59 and 60 of the Rent Law, (Beng. Act VIII of 1869), for an order that the tenure should be sold for its own arrears, which was objected to by the Official Assignee, who contended that the

decree-holder's only right was to prove in the insolvency for the amount of his debt, it was held that whether the arrears became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree.

The present section follows these later rulings, as is apparent from the words "and the rent shall be a first charge thereon," so that now, whenever a tenure or occupancy-holding is sold, whether in execution of a decree for its own arrears, or (when it is a transferable tenure or holding) at a private sale, it is sold subject to the lien of the landlord on it for rent due at the time of the sale.

Execution of a decree for arrears of rent.—The words "and the rent shall be a first charge thereon," do not mean that the holder of a decree for arrears of rent must first proceed against the tenure or holding in respect of which the arrears have accrued. Under the former law, execution had first to be taken out against the person or moveable property of the judgment-debtor, but could not be taken out simultaneously against both. Saleable under-tenures, however, could be proceeded against in the first instance for their own arrears. But no order for the sale of any such tenure could be made when a warrant of execution had previously been issued against the person or moveable property of the judgment-debtor, so long as such warrant remained in force. After proceeding against the person or moveable property, the decree-holder could then proceed against the tenure or holding on which the arrears had accrued, and then against the other immoveable property of the judgment-debtor, but till the tenure on which the arrears had accrued was sold, other landed property could not be brought to sale. (*Joki Lal* v. *Narsing Narain Singh*, 4 W. R., Act X, 5 ; *Deanatullah* v. *Nazar Ali Khan*, 1 B. L. R., A. C., 216, 10 W. R., 341 ; *Dular Chand Sahu* v. *Lal Chabil Sahu*, L. R., 6 I. A., 47 ; 3 C. L. R., 561 ; *Harish Chandra Rai* v. *The Collector of Jessore*, I. L. R., 3 Calc., 712 ; *Lalit Mohan Rai* v. *Binodai Debi*, I. L. R., 14 Calc., 14 ; but see *contra*, *Krishna Ram Rai* v. *Janaki Nath Rai*, I. L. R., 7 Calc., 748). Such, however, is not now the law. A tenure or holding is hypothecated for the rent. The rent is a first charge thereon, and till the rent due is paid, no sale or transfer of the tenure or holding will affect the landlord's right to sell the tenure or holding and realise the rent due to him by the sale ; but a holder of a decree for arrears of rent is in no way restricted in the execution of his decree, and can now execute it in any way that is lawful under the Civil Procedure Code, that is, against the person or other property, whether moveable or immoveable, of his judgment-debtor. It has also been held that the "charge" referred to in sec. 65 of this Act is not such a charge as that defined in sec. 100 of the Transfer of Property Act. (*Fatik Chandra De Sirkar* v. *Foley*, I. L. R., 15 Calc., 492.) Rent is "moveable property, and in execution of a decree for arrears of rent the judgment-debtor's right to recover rent due from an under-tenant can be sold." (*Mahesh Chandra Chatarji* v. *Guru Prasad Rai*, 13 W. R., 401.) When the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain, as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, are under sec. 266 (*b*) C. P. C., exempt from attachment and sale in execution of decrees ; but the materials of his houses and any other buildings occupied by him as an agriculturist, though exempt from attachment or sale in execution of ordinary decrees, cl. (*c*), are yet liable to be attached and sold in execution of decrees for arrears of rent. (See Proviso II to sec. 266, C. P. C., *Manikal Venilal* v. *Lakha*, I. L. R., 4 Bom., 429 ; and *Radha Krishna Hakumji* v. *Balvant Ramji*, I. L. R., 7 Bom., 530.) As a general rule, the tenure or holding

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itself, and not merely the interest of the judgment-debtor, passes at a sale held in execution of a decree for arrears of rent, but on this point reference is invited to the note on this subject, appended to sec. 159, in which all the rulings on the subject are collected.

Ejectment for arrears in other cases. Sec. 78, Act X, 1859; sec. 52, Act VIII, 1869, B. C.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

The provisions of this section make it clear that a non-occupancy and an under-raiyat can be ejected for an arrear of rent, and for an arrear of a produce-rent as well as of a money-rent. (*Krishna Gopal Mawar* v. *Barnes*, I. L. R., 2 Calc., 374.)

Sub-section (2).—The fifteen days' grace mentioned in sub-sec. (2) runs from the date of the final decree. (*Radha Mohan Mandal* v. *Bakshi Begam*, Marsh., 471; *Nur Ali Chaudhri* v. *Koni Meah*, I. L. R., 13 Calc., 13.) The Appellate Court may extend the period of grace, as well as the Court of first instance. (*Naba Krishna Mukharji* v. *Rameshar Gupta*, 18 W. R., 412; *Abdur Rahman* v. *Digambari Dasi*, 18 W. R., 47%.) But when the decree is not modified in review, the fifteen days' grace will run from the date of the original decree. (*Poreshnath Mandal* v. *Krishna Lal Datta*, 23 W. R., 50.) The amount of the decree can be paid into Court on the day on which it re-opens. (*Hossain Ali* v. *Donzelle*, I. L. R., 5 Calc., 906.) Payment into Court with a protest as to the sum improperly charged as interest is a sufficient payment. (*Shrishtidhar De* v. *Durga Narain Nag*, 17 W. R., 462.) Where a decree directs the payment into Court within a limited time, it is sufficient compliance with such decree, if the judgment-debtor brings the money into Court within that time and diligently takes the necessary steps required by the departmental rules for its actual payment into the Treasury. (*Gajadhar Panre* v. *Naik Panre*, I. L. R., 8 Calc., 528.) The

fifteen days' grace allowed to a lessee prior to ejectment cannot be negatived by any condition in the lease. (*Jan Ali Chaudhri* v. *Nittyanand Basu*, 10 W. R., F. B., 12 ; *Madhab Chandra Adit* v. *Ram Kalu*, 16 W. R., 151 ; *Duli Chand* v. *Rajkishor*, I. L. R., 9 Calc., 88.)

Sub-section (3).—The Court alluded to in this sub-section is the Court passing the decree, not the Court executing it. The latter Court is bound to execute the decree in the shape in which it comes before it, and has no authority to permanently stay execution of any portion thereof, *e. g.*, when a decree is for money and for ejectment in the case of non-payment within fifteen days, the Court executing it is not competent to extend the period of payment in order to save the judgment-debtor from the alternative consequence. (*Sankur Singh* v. *Harimohan Thakur*, 22 W. R., 460.) The Court has discretion to stay execution on other grounds than those on which it is bound to do so under sec. 52, Act VIII of 1869, B. C. (*Rao Bani Ram* v. *Ram Nath Saha*, 10 B. L. R., App., 2 ; 18 W. R., 412.)

Receipt of rent subsequent to a decree for ejectment operates as a waiver of the right to eject.—The receipt of rent subsequent to a decree for ejectment from a tenant against whom the decree was passed renders execution of the decree impossible. (*Naba Krishna Mukharji* v. *Harish Chandra Banarji*, 7 W. R., 142 ; *Umesh Chandra Chatarji* v. *Kamaruddin Lashkar*, 7 W. R., 20 ; *Savi* v. *Mohesh Chandra Basu*, W. R., Sp. No., Act X, 29.) Receipt of rent is not *per se* a waiver of every previous forfeiture. It is only evidence of a waiver. (*Chandranath Misra* v. *Sirdar Khan*, 18 W. R., 218.) Subsequent receipt of rent amounts to a waiver of the right of re-entry stipulated for in the contract. (*Kali Krishna Tagore* v. *Fazal Ali*, I. L. R., 9 Calc., 843.) A landlord, who sues for arrears of rent for the whole of one year and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under sec. 22 of the Rent Act (Beng. Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. (*Jageshar Chaudhurani* v. *Mahomed Ibrahim*, I. L. R., 14 Calc., 33.)

Interest on arrears. Sec. 20, Act X, 1859 ; sec. 21, Act VIII, B. C., 1869.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Interest must be decreed.—It is no longer discretionary with a Court to decree interest on an arrear of rent or not, as it thinks fit. The language of the section is imperative. A Court must now decree interest at twelve per centum per annum on any and every arrear that may be found due ; but it is to be noted that interest is only recoverable from the expiration of the quarter in which the instalment falls due, so that if the rent is payable by monthly instalments, no interest can be recovered for arrears of the first or second monthly instalment of each quarter. The provisions of this section cannot be evaded ; for, under cl. (*h*), sub-sec. 3, sec. 178, nothing in any contract made between a landlord and a tenant, *after the passing of this Act*, shall affect the provisions of this section relating to

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interest payable on arrears of rent. Hence, stipulations for interest at a greater or less rate than twelve per centum, for interest being payable monthly or for compound interest, contained in any contract made before the passing of this Act are valid; but any such stipulations, contained in a contract made after the passing of the Act, are invalid. At present, therefore, unless there be a subsisting contract to the contrary made before March 14th, 1885, interest, whether there be a contract on the subject or not, and if there be a contract, whatever its terms may be, is payable quarterly and at the simple rate of neither more nor less than 12 per centum per annum. It has been held that the mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent does not amount to a waiver of such right. (*Jahuri Lall* v. *Ballab Lall*, I. L. R., 5 Calc., 102; 4 C. L. R., 349. See also *Ratikant Basu* v. *Gangadhar Biswas*, W. R., F. B., 13.) In order to establish variation in a written contract, it must be distinctly pleaded and proved when and how the variation took place; the mere fact of a kabuliyat not having been enforced in the most stringent manner does not take away from the lessor the right to enforce it. (*Piari Mohan Mukharji* v. *Brojo Mohan Basu*, 21 W. R., 36.) While a suit for enhancement of rent is pending, the defendant is not liable for interest, inasmuch as his rent is undetermined. (*Raj Mohan Neogi* v. *Anando Chandra Chaudhri*, 10 W. R., 166.) In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time when the rent became due. (*Ahsanullah* v. *Aftabudin*, 3 C. L. R., 382.)

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Secs. 2 & 3, Act VI, B.C., 1862; secs. 44 & 45, Act VIII, B. C., 1869.

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Sub-section (1).—The award of damages is discretionary and not imperative. Before awarding damages, the Court in the exercise of its discretion must look to the condition of the parties and the particular hardship inflicted on the land-

lord by the omission of the under-tenant to pay his rents. (*Rambaddan Singh* v. *Srikunwar*, W. R., Sp. No., Act X, 22; *Gopal Lal Thakur* v. *Mahomed Kadir*, W. R., Sp. No., Act X, 73; *Zamirudunnissa Khanum* v. *Phillipe*, 1 W. R., 290.) The refusal of a Court to award damages is not a ground for special appeal. (*Mahtab Chand* v. *Debendro Nath Thakur*, W. R., Sp. No., Act X, 68.) Damages are in substitution of, and not in addition to, interest. (*Nobo Kant De* v. *Boroda Kant Rai*, 1 W. R., 100.) Tenants are liable in damages for neglect to pay road and public works cesses. (*Saroda Prasad Ganguli* v. *Prasanno Kumar Sandial*, I. L. R., 8 Calc., 290.)

Produce-rents.

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

Systems of appraising or dividing produce current in Behar.—The practice of paying rent in kind is chiefly prevalent in South Behar. There are two systems of produce-rents in force in Behar—(1) the *Agore Batai* system, under which the crop is actually divided, and the landlord's share made over to him; and (2) the *Bhaoli* or *Danabandi* system, under which the raiyat agrees to pay the landlord the market value of a certain proportion of the produce; the crop is valued at each harvest, and the rent is paid in money according to this valuation. The mode of dividing the produce, *i.e.*, of paying the produce-rent under these systems, has been described by the Commissioner of Patna in a letter No. 1130 of 21st August, 1858, addressed to Secretary to Board of Revenue, as follows: Under the *Agore Batai* system—"the landlord employs men," it is said, "to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure the crop is cut and threshed by the raiyat under the superintendence of the zamindar's servants, and the produce divided on the threshing-floor; but it is also mat-

ter of arrangement between the parties in this case, whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing-floor of the raiyat's village, or at some other place more convenient to the zamindar." Under the *Bhaoli* or *Danabandi* system, it is said, "when the crop is ripe, the *patwari*, the *gomastha*, the *amin*, a *jarcebkush* or measurer, a *salis* or arbitrator, a *navisinda* or writer," and the *jet* raiyats (head raiyats) "of the village, with the raiyat himself, proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce, the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the raiyat cuts a cottah where the crop is thinnest; the zamindar's people cut another where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a *Danabandi*, is made out by the *patwari* and his writer, and signed by those present. The raiyat is then at liberty to cut and store his grain. The *patwari* next prepares a paper called a 'Behree,' showing the amount of grain in the possession of the raiyat, and the respective shares of the *malik* and the raiyat, and sends for the *malik's* share, which the raiyat either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the *gomastha* writes to the *amlah* of the surrounding villages for the *nirik* or market rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weighment form the chief evidence in these *Bhaoli* cases, and that a *jamawasil* account is of comparatively little use." This latter system (*i.e.*, the *Bhaoli* or *Danabandi* system) is stated to have led to abuses, the raiyat being often prohibited from cutting the crop until he agreed to the landlord's appraisement of the produce, and if he continued recusant, the crop was in many cases allowed to rot in the ground. The provisions of this section are intended to put an end to such abuses.

Sub-divisional officers have powers of a Collector.—Government Notification, dated the 21st April, 1886 (published in Part I of the *Calcutta Gazette* of 28th April, 1886, p. 466), gives to all Sub-divisional Officers powers of a Collector under secs. 69, 70, and 71 of this Act.

Application may be a joint one.—The Board of Revenue in a letter (No. 350A of the 6th May, 1886, to the address of the Commissioner of Patna) have said that "there is no objection to the Collector receiving a joint application for the appraisement or division of the produce from either landlords or tenants." If there be more than one landlord, such an application must, under the provisions of sec. 188, be made by all of them collectively or by their common agent.

Procedure when nature of tenancy is disputed.—A question has been raised as to what course should be adopted by the Collector, when the non-applicant party objects that the rent is not payable in kind. On this point the Board of Revenue have said in a letter to the address of the Commissioner of Patna (No. 663A of the 31st August 1886), that "the Board think that the wording of the law contemplates the existence of an undisputed *Bhaoli* tenancy. But it is not correct to say that, when the non-applicant party objects that the holding is not *Bhaoli*, the Collector has no option but at once to reject the application without entering at all into the question in dispute. The Board are, therefore, of opinion that in cases in which it is shown that the parties have treated the holding as *Bhaoli*, the Collector should not reject an application under sec. 69 merely because one party alleges that the holding is *nugdi*. The most satis-

factory evidence on the point would be a receipt in the form prescribed by the Tenancy Act, but in default of this, other evidence might be accepted. It is not necessary, the Board think, that the Collector should refer the question for the decision of the Civil Court. The Collector will not decide "whether the holding is *Bhaoli* or not. He will merely decide whether he will or will not proceed to make the particular appraisement or division." In a subsequent letter (No. 662H., of the 30th June, 1888, to the address of the Secretary to the Government of Bengal), the Board of Revenue has said that the principal difficulties experienced in working the procedure provided in the Bengal Tenancy Act for valuing crops to be divided between landlord and tenant under the *Bhaoli* system "seem to fall under one or other of the two following heads:—First, when there is a *bonâ fide* dispute as to whether the land is held *Bhaoli* or not; and secondly, when a claim is made by a third party, whether landlord or tenant. In the former of these cases, it appears to the Board (as they have already held) that a mere unsupported denial by one of the parties that the land is held *Bhaoli* does not bar the Collector's jurisdiction, but that when there is a *bonâ fide* dispute whether rent is or is not taken by appraisement or division of the produce, the Collector has no power to make an order under sec. 69 of the Tenancy Act. . . . The second case, that of claims by third parties, does not seem to be provided for by the Act."

Meaning of "Officer."—"The use of the word "officer" in sec. 69, the Board say, "indicates an intention on the part of the legislature that the person selected should not be a mere private individual, but should have some official or quasi-official status independently of his employment on this duty. Similarly, the wording of sec. 124, directs the Court to depute an officer to distribute the produce. It would be putting a somewhat strained construction upon both these sections if it were held that any person deputed by the Collector to make a division or by the Court to effect a distraint became by the fact of such deputation an "officer." The person deputed need not be a person holding a permanent salaried appointment under Government, but it appears to be intended that he should be a person in some kind of official subordination to the Collector. A Sub-Deputy Collector or a Canungoe would probably be appointed only in important cases. In other cases a Baxee or a ministerial officer or an apprentice of the Collectorate, or an intelligent peon might be deputed, and the Board see no objection to the employment of Putwari Amins on this duty. Cases might occur in which the putwari might properly be appointed." (Board of Revenue's No. 663H., dated 31st August, 1886, to Commissioner of Patna.)

Proceedings to be of a summary nature.—"The proceedings should not be allowed to be spun out," the Board remark, "or conducted with the formalities of a civil suit. There should be no adjournment, and the award should be of a summary kind. The officer deputed should be directed to keep a diary, showing his daily proceedings, and the Collector should satisfy himself that there has been no unreasonable delay. It was never contemplated that a case of this kind should take weeks to decide."

Costs.—"When a salaried officer is employed," the Board say, "any sum which may be charged to meet his salary, should be credited to Government, and only travelling allowance and expenses should be paid him. The costs levied in a case should be appropriated to that case. No general fund should be formed." (Board of Revenue's No. 663H., dated 31st August, 1886, to Commissioner of Patna.)

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No stamp duty leviable.—Under Art. 4, Sched. II, act I of 1879, an appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent is exempt from stamp duty.

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications, and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard, and making such enquiry (if any), as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final, and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Sub-section (5).—A question has been raised as to what course should be adopted by the Civil Court on receiving a reference from the Collector under sub-sec. (5). On this point, the Legal Remembrancer in a letter to the Board (No. 611, dated the 12th August, 1886) has said: "It would appear that the Court receiving a reference would pursue its ordinary course, and only take action when moved by the parties, as in regular suits; the latter part of the clause requiring an application by the parties to give the Collector's order the force of a decree, lends countenance to this view."

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

The tenant is now entitled to exclusive possession of crop.—The old law made no special provision regarding the possession of the crop, where rent was payable in kind, and the consequence was that it was sometimes held that neither the landlord nor the raiyat alone could cut or remove the crop without the consent of both. By others, however, it was held the raiyat could cut the crop, tender to the landlord what he deemed to be his due share and remove the rest. If the landlord refused to take delivery of the share tendered, the raiyat might allow it to remain in the threshing-floor. In practice, however, the raiyat was not allowed to cut the crop without the landlord's consent. This section gives the raiyat the right to the exclusive possession of the crop under both the *Agore Batai* and the *Bhaoli* systems of produce-rents. He is also entitled to cut and harvest the produce, while the interests of the landlord are duly protected by the provisions of sub-sec. (4).

Penalty for interference with the produce.—Under sec. 186 (1), (*c*) if any person otherwise than in accordance with this Act or some other enactment for the time being in force, except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Rulings under the old law.—The Rent Act recognizes payment in kind, and where there is an agreement to pay rent in crops, and the produce is not paid, a suit for the money value of the produce at the time when it ought to have been paid, will lie as a suit for arrears of rent. (*Krishnabandhu Bhattacharji* v. *Rotish Sheikh*, 25 W. R., 307.) In a suit to recover *Bhaoli* rent, or the value of crops, which the defendant ought to have made over to the plaintiff, it was held that the

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damage to the plaintiff was the value of the crops, at the time they were due, and not subsequently. (*Lachman Prasad* v. *Hulas Mahtun*, 2 B. L. R., App., 27; 11 W. R., 151.) In a suit for rent when the quantity of land for which rent is claimed is in dispute and the landlord produces as evidence a *khasra* or appraisement of the land, it is not necessary for him to show that the estimate was drawn-up in the presence of the defendant, and was acknowledged by him: it will be sufficient if the defendant (a *Danabandi* tenant), had notice when the *khasra* was about to be made. (*Hari Narain Singh* v. *Beljit Jha*, 24 W. R., 125.) A landlord who refuses to accept rent in kind when it is offered to him on the ground that he is suing for a money rent cannot, on the dismissal of his suit, come into Court again and sue his tenant for the value of what he refused when it was proferred. (*Narain Gir* v. *Gaur Saran Das*, 23 W. R., 368.)

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

It must be remembered that under sec. 3 (5), the word "rent" in secs. 72 to 75, includes also money recoverable under any enactment for the time being in force as rent.

Landlord's right to transfer his interest.—There appears to be no restriction on the landlord's right to transfer or assign his interest, and all landlords are in the habit of creating estates intermediate between themselves and their tenants at their pleasure. In a case in which a zamindar first granted a *taluki* pottah to certain persons, and then leased the zamindari in *patni* to certain others, who sued the holders of the *taluki* pottah for rent, it was said:—"The defendants have already contracted to pay the rents to the zamindar. If the zamindar requires them under his arrangements with the plaintiffs as patnidars to attorn to the patnidars, he should take measures to give notice and make assignments accordingly. Then, the rents payable under the defendants' *taluki* pottah to the zamindar will become rents payable under the same pottah to the assignees of the zamindar." (*Mansur Ahmad* v. *Azizuddin*, W. R., Sp. No., Act X, 129.) But a landlord cannot create two estates of the same degree; so where a zamindar granted two pottahs to two different persons for the same land, it was held that

the lease subsequently granted to the plaintiff could not constitute him the landlord of the defendant. (*Kallam* v. *Panchu Mandal*, 11 W. R., 128.)

Tenant's liability on transfer of landlord's interest.—Under sec. 50 of the Transfer of Property Act (IV of 1882), no person is chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he has in good faith held such property, even though it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits. This section of the Tenancy Act seems to go further, and to absolve the tenant from all liability for any payment he may make after the date of transfer unless the transferee has before payment given him express notice of the transaction. It would seem to be immaterial whether the tenant in making the payment acted in good faith or not, or was otherwise aware of the transfer. Express notice of the transfer from the transferee would seem to be necessary to bind the tenant, and render him liable to pay rent to the transferee. There is no provision as to whether the notice is to be a verbal or written one. Probably it may be either.

Payment of rent made in advance.—This section does not say whether a tenant on the transfer of his landlord's interest would be entitled to credit for a payment of rent made in advance to the transferor. In one case (*Ram Lal Shaha* v. *Jogendro Narain Rai*, 18 W. R., 328), it was held that an auction-purchaser with notice of a payment in advance, made by the tenant to the former proprietors, of rent due for a period subsequent to the date of purchase is bound by such payment. So a purchaser of land is bound by a contract between his vendor and a tenant which is secured by the rent of the land remaining in the hands of such tenant, the contract being in the nature of an assignment of the rent of the property sold. (*Churaman Singh* v. *Patu Koer*, 24 W. R., 68.) But, on the other hand, "in a case where notice of the plaintiff's claim was given before the rent fell due," it has been said, "it was held that a previous payment of rent afforded the tenant no defence. A tenant who pays rent before it is due cannot be said to do so in fulfilment of his obligation, but rather to make an advance to his landlord on the understanding that on the day when the rent becomes due, such advance shall be treated as a fulfilment of the obligation to pay rent, nor would a tenant in such a case be protected under sec. 50 of Act IV of 1882." (Shephard and Brown's Transfer of Property Act, p. 65.)

Transfer of arrears of rent.—Under sec. 131 of Act IV of 1882, no transfer of a "debt," which means an actionable claim, and not a claim which has passed into a decree (*Afzal* v. *Ram Kumar Bhadra*, I. L. R., 12 Calc., 610), has any operation against the debtor, unless express notice of the transfer is given him, or unless he is a party to or otherwise aware of the transaction; and under sec. 132, such notice must be in writing signed by the transferor, or by his agent duly authorized in this behalf. These provisions are applicable in the case, which is of common occurrence, of the transfer of arrears of rent, or back rents, on the transfer of a landlord's interest. It has, however, been ruled by the High Court in the case of *Jagdeo Sahai* v. *Broja Bihari Lal* (I. L. R., 12 Calc., 505), that an assignment of a debt is perfectly valid, although the notice referred to in sec. 131, Act IV of 1882, has not been given; though the title of the assignee is not complete until such notice has been given. But the assignee may sue the debtor, and his title will become complete on his doing so; for the transfer comes into operation as soon as the

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debtor becomes aware of it, and after a suit is instituted, the debtor becomes aware of the transfer, and the transfer then takes effect. In connection with the subject of transfers of arrears of rent, the provisions of sec. 135 of the Transfer of Property Act are also important. This section lays down that where an actionable claim is sold, he, against whom it is made, is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it. Hence, if the arrears of rent due to a landlord are sold, as they generally are, for a less sum than the full amount due, the tenant is discharged of his liabilities by paying to the transferee the sum actually paid by him, with the incidental expenses of the sale and interest up to the date of payment. (*Rajani Kant Nag* v. *Hari Mohan Guha*, I. L. R., 12 Calc., 470.) But he must pay this amount before the purchaser of the arrears of rent proves his claim in a suit instituted by him for the arrears; for, under cl. (*d*) of sec. 135, nothing in the former part of the section applies "where the judgment of a competent Court has been given, affirming the claim or where the claim has been made clear by evidence, and is ready for judgment." (*Grish Chandra* v. *Kashishwari Debi*, I. L. R., 13 Calc., 145; *Subamal* v. *Venkataramа*, I. L. R., 10 Mad., 289.)

Service of notices of transfer.—The notice of transfer of the landlord's interest referred to in sub-sec. (1) should be served in accordance with Rule 3, Chap. I, of the Government Rules under the Tenancy Act. A special rule has been framed for the service of the general notice referred to in sub-sec. (2) (see Rule 6, Chap. V of the Government Rules, Appendix I).

Apportionment of rent.—Section 72 deals only with the case of the transfer of the whole of a landlord's interest to a single transferee. It is silent as to the cases of the transfer of a share only of his interest, of the transfer of the whole of his interest to more than one transferee, and of the division of his interest amongst different co-sharers. When the subject of the transfer or division is a revenue-paying estate, which can be partitioned by metes and bounds, the "Estates Partition Act, 1876" (VIII, B.C.), provides rules for the apportionment of the rent of the tenants, whose lands fall partly within one share and partly within another. But there are no similar rules applicable, when revenue-free land, or a tenure or under-tenure in revenue-paying land is partially transferred to more than one transferee, or has to be divided between co-sharers. In all these cases, it is necessary to apportion the tenant's rent, and the question of the liability of the tenant for the rent to the transferee, or transferees, and co-sharers arises. There can be no doubt that, as the law now stands, the tenant cannot be compelled to pay his rent proportionately to different persons without a regular civil suit for the apportionment of his rent being brought against him. But it has hitherto been held that, on such a suit being brought, his rent will be apportioned, and will become payable proportionately to the transferee, transferees, or co-sharers, as the case may be. This is in accordance with the principle laid down in sec. 37 of the Transfer of Property Act, which, however, makes the proportionate shares of the rent payable on notice of a severance, without its being necessary to have recourse to a suit. But this section has not yet been made applicable by the Local Government to leases for agricultural purposes. There is a long series of High Court rulings to the above-mentioned effect. One of the earliest of these is the case of *Beni Madhub Ghosh* v. *Thakur Das Mandal*, B. L. R., F. B., 588, in which Peacock, C. J., said: "It appears that the tenant originally held under four brothers, of whom

Gobind Mani's husband, Sri Krishna, was one. They were a joint family, and the tenant was paying rent to them jointly. I should have thought myself, though it is unnecessary to express any decision upon the point, that when rent is received by a joint family, the tenant is not liable to be sued by each member of the joint family, for a separate share of rent. But if the estate is severed by partition, and instead of being a joint estate, becomes separate estates, then the rent would be apportioned in respect of the several allotments, and each member would be entitled to sue for his separate share of the rent in respect of the lands allotted to him on partition." Another early case in which the question of apportionment of rent was dealt with is that of *Gopanand Jha* v. *Gobind Prasad* (12 W. R., 109), in which it was said that when a lessee was evicted from part of his land, by a title paramount to that of his lessor, an apportionment of the rent might take place. In *Anu Mandal* v. *Kamaludin* (1 C. L. R., 248), it was said that when a tenant has agreed with his landlords to pay a certain rent for his whole holding, the fact that he has paid each landlord his proportionate share of the rent is not conclusive, but merely presumptive, evidence that for the original contract there has been substituted a separate contract with each of his lessors. The next case is that of *Srinath Chandra Chaudhri* v. *Mohesh Chandra Bandopadhya* (1 C. L. R., 453), in which seven mauzas had been let in *patni* to certain tenants by the zamindar, and then, under a decree against the zamindar, three of these mauzas were sold to A, and the other four to B. A then brought a suit against the *patnidars* to have his share of the rent apportioned, making B, purchaser of the other mauzás, a party to the suit, and it was held that the suit was properly brought. Then, in the case of *Annoda Charn Rai* v. *Kali Kumar Rai* (I. L. R., 4 Calc., 89), the Court (Garth, C. J., and McDonell, J.) said: "If *ijmali* property is let to a tenant at one entire rent, we think it clear, upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not. Of course, if the land demised ceases to be *ijmali*, and one portion of the divided area becomes the property of A, whilst another becomes the property of B, it is necessary that an apportionment of the rent should take place; and then, in order to obtain such an apportionment, it would be quite proper that either A or B should bring a suit against the tenant for so much of the rent as he considers his proper portion, making B or A, as the case may be, defendant to the suit. But here there has been no division of the area of the property. The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the other co-sharers remains *ijmali*." It was accordingly held in this case, that the suit would not lie. Recently, in the case of *Ishar Chandra Datta* v. *Ramkrishna Das* (I. L. R., 5 Calc., 902), the law on this point was settled by a Full Bench, by whom it was said "that a sale of a share in a tenure, which has been let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure, and an apportionment of the rent, he must give the tenant due notice to that effect, and, then, if an amicable arrangement of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the

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rent apportioned, making all the other co-sharers parties to the suit." "It is impossible upon principle," it is further said, "to distinguish cases, when a tenure is sold privately, from those when it is sold by public auction; or, on the other hand, to distinguish cases, when a tenure is severed by different portions of its area being sold to different persons, from those when it is sold to different persons in undivided shares. In all cases of this kind, the entirety of the joint interest should be considered as severable at the option of the purchaser, and it would lead to most inconvenient results, and to the depreciation of the property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum conjointly with one another, or with the owner of the unsold shares or portions." There is a further case, *viz.*, *Durga Prasad* v. *Ghosita Goria* (I. L. R., 11 Calc., 284), which has been recently decided, which relates to this subject. In this case the plaintiff held a *jote* under the defendants and their co-sharers, who were jointly in possession of an estate paying revenue to Government. In the year 1877, the estate was partitioned, and out of the lands held by the plaintiff, a plot measuring about fifteen cottahs, was allotted to the defendants as their share. It was not disputed that the rent payable in respect of the land was at the rate of Rs. 4 per bigha. After the partition the defendants enforced a payment from the plaintiff of Rs. 5 odd on account of the land held by him, which formed the share allotted to them on the partition. The plaintiff therefore instituted the suit, nominally under the provisions of sec. 19 of Act VIII, B. C., of 1869, for abatement of rent, and for a declaration that he was only bound to pay rent at the rate of Rs. 4 per bigha for the amount of land held by him. It was held in this case that it was not properly a suit for abatement of rent, but a suit for apportionment of rent, and for a declaration that after *batwara*, the share of the rent which the plaintiff was liable to pay to the defendant was, as stated in the plaint.

It is important to note that in a suit for apportionment of rent all the sharers must be made parties, and non-joinder of anyone of them is fatal. Thus, in a suit for arrears of rent of the plaintiff's share of a taluk, it appeared that in the year 1279, a *batwara* was effected of the zamindari, in which the defendant's taluk was situated, and that the taluk ceased to be held exclusively by the plaintiff, and was divided between him and certain other persons, who were not made parties to the suit. In this case it was held that all the co-sharers should have been joined as parties, and that as this had not been done, the suit was bad; and, further, that the plaint could not be amended by making the co-sharers parties at the hearing of the appeal. (*Abhoy Gobind Chaudhri* v. *Hari Charn Chaudhri*, I. L. R., 8 Calc., 277.)

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent after transfer of occupancy-holding.

The provisions of this section, no doubt, apply only to occupancy-raiyats whose rights are transferable by custom. The case of permanent tenures is, of

course, provided for in secs. 12 to 16, but there is no provision made, either in this section or elsewhere, for the case of tenures which are not permanent and of other transferable tenancies, if there be any, being transferred without notice to the landlord. In such cases the landlord will, upon general principles, not be affected by a transfer of which he has had no notice, and the transferor will continue liable to him for the rent. The notice referred to in this section may, no doubt, be either an oral or a written one, and it seems desirable that both the old and the new tenant should join in giving it. Under sec. 88, a tenant cannot transfer a share of his tenancy, or make any apportionment of the rent thereof, so as to bind the landlord, without his consent in writing.

In the case of occupancy-rights which are transferable by custom, if the landlord receives rent from the transferee and is aware of the transfer, the transferor ceases to have any connection with the holding. (*Abdul Aziz Khan* v. *Ahmad Ali*, I. L. R., 14 Calc., 795.)

Service of notice.—Rules regarding service of the notice of transfer referred to in this section have been framed by the Local Government, and will be found in Appendix I. (See Rules 7 and 8, Chap. V, Appendix I.)

Illegal Cesses, &c.

74. All impositions upon tenants under the denomination of *abwáb*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwab, &c., illegal. Secs. 54 & 55, Reg. VIII, 1793; sec. 3, Reg. V, 1812; sec 9, Reg. VII, 1822; sec. 10, Act X, 1859; sec. 11, Act VIII, 1869, B C.

Abwabs.—By secs. 54 and 55, Reg. VIII of 1793, all *abwábs* or cesses then existing were to be consolidated into one specific sum, and the imposition of any fresh *abwáb* or *mahtut*, under any pretences whatever, was made punishable by a penalty equal to three times the amount imposed. Section 3, Reg. V of 1812, declared that nothing therein contained should be construed as sanctioning or legalizing the imposition of arbitrary or indefinite cesses whether under the denomination of *abwáb*, *mahtut*, or any other denomination. Acts X of 1859 and VIII (B. C.) of 1869 prohibited the exaction of any sum in excess of the rent specified in the tenant's pottah. The High Court's rulings on the subject of the illegality of cesses have, however, not been uniform. The following cesses have been held to be illegal :—(1) *Najai*, a tax imposed upon cultivators, to make up for any deficiency arising from the death or disappearance of their neighbours (see Wilson's Glossary, p. 363), even when paid for three years. (*Dhali Paramanik* v. *Anand Chandra Tolapatro*, 5 W. R., Act X, 86); (2) A certain quantity of *gur* on every maund manufactured (*Sonam Sukal* v. *Ilahi Baksh*, 7 W. R., 453); (3) A tax for grazing cattle within certain boundaries (*Bhaghirath Shikdar* v. *Ram Narain Mandar*, 9 W. R., 300); (4) *Bakumat* (*Arjun Sahu* v. *Anand Singh*, 10 W. R., 257); (5) *Parabi* or festival cess (*Kamala Kant Ghosh* v. *Kanu Mahomed Mandal*, 11 W. R., 395; 3 B. L. R., A. C., 44); (6) *Patwarian* or patwari's fees (*Barmah Chaudhri* v. *Srinath Singh*, 12 W. R., 29; (7) *Purvi bhika*, a sum collected on the first eating of rice by a child (*Nobin Chandra Rai* v. *Guru Gobind*

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Sarmah, 14 W. R., 447) ; (8) Patwari's allowances, *sidha*, or daily allowances, and *pasban's* or watchman's wages (*Mengar Mandal* v. *Hari Mohun Thakur*, 23 W. R., 447); (9) *Dastur*, *hajatana*, *sonari*, *batta mal*, *batta company*, *neg*, or landlord's fee, *pansera*, or harvest fee, *bodhwara*, or fee for the wages of village-watchmen, *pohwi*, or fee for the wages of the priest, *nocha*, or fee for the wages of village-establishments, *mangan*, and *sidha*, or putwari's dues (*Chultan Mahtan* v. *Tilakdhari Singh*, I. L. R., 11 Calc., 175).* On the other hand, it has been held that if a zamindar demands a cess over and above the original rent, and the raiyat consents and contracts to pay it, this demand and the old rent, form a new rent lawfully claimable under the contract. (*Jiatullah Paramanik* v. *Jogendro Narain Rai*, 22 W. R., 12.) Then, in *Budhna Orawan Mahtun* v. *Jogeshar Doyal Singh* (24 W. R , 4) it was said that certain payments, which were not so much in the nature of cesses, as of rent-in-kind, and which were fixed and uniform, and had been paid by the raiyat from the beginning, according to local custom, were not illegal cesses. It has also been said that there is nothing illegal in a *parabi*, or festival cess, when it is part of the consideration for which an agreement is entered into. (*Jagodish Chandra Biswas* v. *Tarikullah Sirkar*, 24 W. R., 90.) Further, a tahsildar is bound to account to the landlord for payments called *bhika*, made to him by tenants in excess of the rents due from them, if made voluntarily ; but sums exacted from the tenants by a tahsildar cannot be recovered by the landlord. (*Nobin Chandra Rai* v. *Guru Gobind Mazumdar*, 25 W. R., 8.) In the *Serajganj Jute Co.* v. *Torabdi Akund*, (25 W. R., 252), it was said that where a raiyat has for many years been paying a *tallab beshi* of 2 as. in each rupee, in addition to the *asal jama* of the holding, and the two payments have been incorporated in time, and have actually formed the subject of a single receipt, which the zamindar challenged the raiyat, but which the raiyat failed, to produce, and where a raiyat, for the purpose of preventing disputes with his landlord, and for securing his own interests, has agreed to make a definite payment to his landlord in addition to his rent, such additional payment cannot be treated as an illegal cess ; for the law favours such arrangements and provides for their being enforced. Again, it has been ruled that there is nothing illegal or contrary to public policy in the levying by riparian owners of *kuntagari*, or a charge imposed upon boatmen for driving stanchions or pegs into the river-bank for the purpose of attaching their boats thereto (*Dhanpat Singh* v. *Dinobandhu Saha*, 9 C. L. R., 279) ; and in *Mahomed Faiz Chaudhri* v. *Jamu Ghazi* (I. L. R., 8 Calc., 730), it was said that a condition in a lease, that a tenant will pay to the landlord collection-charges, can be enforced, if the condition is definite and certain in its nature and forms part of the consideration for the lease.

In a recent Full Bench decision (*Chultan Mahtun* v. *Tilukdari Singh*, I. L. R., 11 Calc., 175), the High Court decided that *abwábs* cannot be recovered, even though they existed before the time of the Permanent Settlement, and though, by the custom of the estate, the raiyats, and their ancestors before them, have, for a great number of years, paid such *abwábs*. In this case, Garth, C. J., said "I consider that the Regulation of 1793, as well as the Rent Law of 1859, intended to put an end to the *abwáb* system, and to render them illegal. It has been argued that to abolish this system is contrary to the wishes of both

* For further particular regarding *abwábs* usually collected, see Bengal Administration Report, 1872-73, pp. 24, 25, selections from papers relating to the Bengal Tenancy Act, 1885, pp. 108, 109 ; and Field's Regulations, pp. 60, 61.

landlords and raiyats, and I believe that to be true. Landlords often find it a convenient means of enhancing their rents in an irregular way, and the raiyats, as a rule, would far rather submit to pay *abwábs* than have their *asal* rent increased. But the system appears to me to be clearly illegal, and I consider that the Civil Courts should do their best to put an end to it." Mitter, J., in the same case observed: "Under the provisions of the Regulations and Acts cited above, it seems to me that a contract for the payment of *abwábs* is unlawful, and is not enforceable by law. It has been contended before us that a claim for the recovery of the *abwábs* existing before the Permanent Settlement is enforceable, notwithstanding these provisions, because sec. 54 of Reg. VIII of 1793 contained only a direction for the consolidation of the *abwábs* with the *asal jama;* but no penalty was attached to an omission on the part of the landholders to act according to that direction. But it seems to me that this contention is not correct, because sec. 61 of the said Regulation, in my opinion, provided the penalty in question—that penalty being the non-suiting of the claim for the recovery of the *abwábs*." But in a still later case, a Division Bench (Tottenham and Ghose, JJ.) remarked, that "what is and what is not an *abwáb* must depend upon the circumstances of each particular case in which the question arises." It further held that where, by a kabuliyat, dated 1869, a defendant, as holder of a *mokarari* tenure, agreed to pay a certain fixed sum as rent, and also certain sums designated *tehwari* and *salami*, they were not illegal cesses within the Full Bench ruling of *Chultan Mahtan* v. *Tilukdari Singh*, not being uncertain and arbitrary in their character, but specific sums which the tenants agreed to pay to the landlords, and the payment of which, no less than the payment of the rent itself, formed part of the consideration upon which the tenancy was created, and were, in fact, part of the rent agreed to be paid, although not so described; they were, therefore, recoverable under Regulation V of 1812. (*Padmonand Singh* v. *Baija Nath Singh*, I. L. R., 15 Calc., 828.)

Dak-cess.—Dak-cess is not an illegal cess; neither is it rent, according to any enactment now in force. But under the provisions of sec. 12, Act VIII of 1862, B. C., landlords can collect it from their tenants, if the latter have agreed to pay it to them. It has also been held by the High Court that patnidars are liable for zamindari dâk-charges, if, under the old law—that is, before the passing of Act VIII of 1862, B. C.—they were liable for these charges, or had been in the habit of paying them. (*Bissonath Sirkar* v. *Sharno Moyi*, 4 W. R., 6.) In this case it was said that "Act VIII of 1862 was not intended to impose any new tax, but to consolidate and regulate an old liability. Primarily, the zamindars are, in all cases, liable to Government; but it was not designed to alter any right of reimbursing themselves from under-holders, which they might possess. In the case of raiyats, all liabilities are required by law to be consolidated and included in the pottah, and a liability beyond the stipulated rent could not be urged; but this does not seem to be so in regard to intermediate-holders." In other cases, it was held that it depended on the terms of their leases whether patnidars were liable to pay dâk-cess or not. (See *Saroda Sundari Debi* v. *Uma Charn Sirkar*, 3 W. R., S. C. Ref., 17; *Saroda Sundari Debi* v. *Tarini Charn Saha*, 3 W. R., S. C. Ref., 19; *Rakhal Das Mukharji* v. *Sharnomoyi*, 6 W. R., 100; *Rohini Kant Rai* v. *Tripura Sundari Dasi*, 8 W. R., 45.) Landlords cannot collect dâk-cess as rent by a suit under the Tenancy Act. They can only sue for it as money due on a contract. (*Mahtab Chand* v. *Radha Binod Chaudhri*, 8 W. R., 517; *Erskine* v. *Trilochan Chatarji*, 9 W. R., 518.)

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Sec. 10, Act X, 1859; sec. 11, Act VIII, B. C., 1869.

Special enactments making demands other than rent recoverable as such.—The Cess Act (IX of 1880, B. C.), the Bengal Embankment Act (II of 1882, B. C.), the Bengal Survey Act (V of 1875, B. C.), the Irrigation Act (III of 1876, B. C.), and the Bengal Drainage Act (VI of 1880, B. C.), make certain sums recoverable as "rent." Under sec. 10, Act X of 1859, and sec. 11, Act VIII, B. C., of 1869, the tenant was entitled to recover damages not exceeding double the amount exacted.

Meaning of "exacted."—As to the meaning of the word "exacted," it would seem that it does not necessarily imply the use of force, or a show of force, or threats. In *Ram Prasad Bhagat* v. *Ramtahal Singh* (Marsh., 655), where the zamindar, after granting a *thika* lease, collected the rents direct from the raiyats, and the amount so received exceeded the rent due from the thikadar, the excess amount so collected was held to be an exaction. But when a zamindar collected an excessive amount under a proceeding prescribed by law, it was held that this was not an illegal exaction of rent (*Chandramani Chaudhurani* v. *Debendra Nath Rai*, Marsh., 420); and money so collected cannot be recovered back in a fresh suit or action whilst the decree or judgment under which it was recovered remains in force. (*Durga Prasad Rai* v. *Tara Prasad Rai*, 10 Moo. I. A., 203; 3 W. R., P. C., 11; *Jogesh Chandra Datta* v. *Kali Charan Datta*, I. L. R., 3 Calc., 30.) Where, on the allegation that the defendant had sub-let land to him for the purpose of raising crops, under a contract to share the produce between them, the plaintiff, a *barghadar*, sought to recover the value of his share of the crop, which the defendant had misappropriated, it was held, that the claim was not for a sum exacted in excess of the rent. (*Gharibullah Paramanik* v. *Fakir Mahomed Kholu*, 10 W. R., 203.) A landlord cannot recover from his tahsildar sums exacted by the latter from the tenants. (*Nobin Chandra Rai* v. *Guru Gobind Mazumdar*, 25 W. R., 8. But see 14 W. R., 447.)

Distinction between "lawfully payable" and "lawfully recoverable."—It is only when the sum exacted is in excess of the rent "lawfully payable" that the landlord renders himself liable to the provisions of this section He would, therefore, appear not necessarily to render himself liable to any penalty for collecting from his tenant an amount not "lawfully recoverable," provided the amount was lawfully payable. Thus though a proprietor, who has

not filed a return required under the Cess Act (IX of 1880), is not entitled to recover rent, yet the rent may be lawfully payable to him; and, similarly, when a raiyat collects from his under-raiyat an amount of rent in excess of the limits laid down in cls. (*a*) and (*b*) of sec. 48, he would seem not, necessarily, to render himself amenable to the provisions of this section, as an amount in excess of the limits is not said to be not lawfully payable, but merely to be not lawfully recoverable.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of "improvement."

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;

(*b*) the preparation of land for irrigation ;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this

Act if it substantially diminishes the value of his landlord's property.

The provisions of this section are founded on those of sec. 4, Act XIX of 1883 (The Land Improvement Loans Act).

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

Right to make improvements in case of non-occupancy-holding.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

Registration of landlord's improvements.

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

An enhancement of rent on the ground of a landlord's improvement cannot be granted by a Court, unless the improvement is registered under this section. (See sec. 33.) It is to be observed that all that this section authorizes is the registration of the fact that an improvement has been lawfully made by the applicant or at his expense. It does not render necessary or authorize any inquiry as to the cost of the improvement, or the probable benefit that may be expected from it. The registration removes a disability to sue for enhancement on the ground of the improvement, under which the landlord would lie, under the terms of sec. 33, if the improvement had not been registered; but the registration will not in itself be evidence of the value or cost of the improvement, or of the amount of enhancement, which may be properly awarded on account of it. If the landlord desires to have evidence of such matters recorded, he must proceed under the next section (81). The words "lawfully made," render it necessary that the work to be registered must be an improvement within the meaning of sec. 76. A dwelling-house, which is not suitable to the holding, may not be an improvement under the terms of that section, and in that case cannot apparently be registered. Rules under this section have been framed by the Local Government, and will be found in Appendix I. (See Chap. III of the Government Rules—Rules 1 to 6.)

Application to record evidence as to improvement.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or

it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceedings between the landlord and tenant or any persons claiming under them.

It is to be noticed that, while the preceding section removes a disability under which the landlord would otherwise lie, this section enables him or his tenants, if he or they may so desire, to have contemporaneous evidence of improvements recorded, and the evidence so recorded will be admissible in subsequent proceedings between the landlord and tenant. The Local Government has provided that the Revenue-officer recording evidence under this section shall have the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of secs. 182 and 184 of the Civil Procedure Code. (See Chap. III of the Government Rules, Rule 7, Appendix I.)

Compensation for raiyat's improvements.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating

the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Sub-section (1).—A raiyat, on adducing proof that he made the improvement, will be entitled to compensation under sub-sec. (1) of this section, and it will lie on the landlord to establish, by evidence, that the case comes under any of the exceptions mentioned in this section, namely, that compensation has already been paid, that the improvement was made in pursuance of a contract, or under a lease binding the raiyat, in consideration of some substantial advantage, to make the improvement without compensation, and that he has obtained the advantage.

Sub-section (4).—The 2nd March, 1883, is the date on which the motion was made in Council for leave to introduce the Bengal Tenancy Bill.

No rules regarding assessors made.—No rules have yet been made by the Local Government requiring the Court to associate with itself assessors, and determining their qualifications and the mode of selecting them. It has been said in the Report of the Committee appointed to draft the Rules under this Act: "It is hoped that cases of ejectment will be rare. It is probable, too, that the amount of compensation awardable in such cases will not, ordinarily, be very large. It seems a matter of some difficulty to specify in a rule the qualifications of persons whose assistance would be useful to the Court; and we are unwilling to add to the costs of the trial by prescribing a procedure which would involve an expenditure incommensurate with the amount of the compensation. If it should be proved hereafter that the Courts experience a practical difficulty in the decision of these cases, and express a wish for the appointment of assessors, the question of making a rule may be further considered." (*Calcutta Gazette*, November 4th, 1885.)

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

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(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Effect of secs. 76 to 83.—The effect of secs. 76 to 83, which are taken generally from the North-West Provinces Rent Act (XII of 1881), and are new in Bengal, is, that where a landlord makes an improvement and registers it, he will generally be entitled to reap the benefit of it in the shape of an enhancement of rent. But he may not in every case reap the full benefit of an improvement effected by him; for, under sec. 33, sub-sec. (1) (b), cl. (iv), a Court has discretion to refuse an enhancement on the ground that the rent is already so high as not to permit of further enhancement. When a raiyat makes an improvement, he will, if ejected, be entitled, subject to certain exceptions, to receive compensation for it. An occupancy-raiyat will further, while he continues to hold his land, reap the benefit of his improvement, inasmuch as his rent cannot, under Chap. V, be enhanced on account of an improvement made by him. A non-occupancy-raiyat, under similar circumstances, may possibly not be able, in all cases, to retain the full benefit of his improvement, but the check placed on the landlord by the provisions of Chap. VI will, as a rule, protect him in the enjoyment of that benefit.

Advances for the purpose of making agricultural improvements can be obtained by raiyats and landlords under the Land Improvement Loans Act (XIX of 1883). The facts that tenants are now entitled to the benefit of improvements made at their expense, and that loans for the purpose of making improvements can be obtained on easy terms, should give a great stimulus to agricultural improvements; but the experience of other provinces, where compensation for improvement has been allowed by law for some years, does not afford ground for the hope that these sections will, in the immediate future, have much practical effect.

The Legislature has laid down no hard-and-fast rule by which the amount of compensation to be given for improvements is to be awarded. In this, as in many other matters, it has prescribed certain considerations by which the Courts are to be guided, and to which they are to have regard, without defining the precise value to be attached to each or any of those considerations. No rule seems to be possible in such matters, and every case will, probably, have to be decided on its own merits. The amount of compensation will, probably, depend, in each case, on what it would cost the landlord, supposing the improvement had not been executed, to put the holding in the condition in which he receives it from the raiyat.

It is to be noted that, under cl. (*d*), sub-sec. (1), sec. 178, nothing in any contract between a landlord and a tenant, made before or after the passing of this Act, shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding,

Acquisition of land for building and other purposes.

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building-ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

"The necessity of this provision was," the Select Committee remarked, "strongly urged upon them, especially with a view to provide building-sites, either for new tenants, or in cases of diluvion." The Collector's certificate as to the sufficiency of the reason is intended to guard against the abuse of the section.

It is only the landlord of a holding or of a raiyat, who can apply under this section for the acquisition of land. The landlord of a tenure, therefore, cannot make any such application.

Appeal.—An appeal to the District Judge lies against an order passed under this section (Sched. III, Part II, Art. 4).

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

Restrictions on sub-letting.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not

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be valid for more than nine years from the commencement of this Act.

Registration rule under sub-section (2).—Registration Rule 3 lays down that when a sub-lease executed by a raiyat, purporting to create a term exceeding nine years, is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, viz.: "Not admissible under sub-sec. 2, sec. 85 of the Bengal Tenancy Act (VIII of 1885)." The note shall be signed, sealed and dated by the registering officer.

Rulings under the old law as to sub-letting.—Under the old law, a raiyat having a right of occupancy might sub-let it, and he did not thereby incur any forfeiture of his rights. (*Kali Kishor Chatarji* v. *Ram Charn Saha*, 9 W. R., 344; *Haran Chandra Pal* v. *Mukta Sundari*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Jamir Ghazi* v. *Gonai Mandal*, 12 W. R., 110; 13 B. L. R., 278 note; *Khosal Mahomed* v. *Jainudin*, 12 W. R., 451.) But he could not and cannot now, by sub-letting, alter the character of his holding and convert it into an under-tenure. (*Karu Lal Thakur* v. *Lachmipat Dugar*, 7 W. R., 15; *Harihar Mukharji* v. *Jadunath Ghosh*, 7 W. R., 114.) If a man took a lease of land, and at once sublet it, he was held under the old law to be a tenure-holder (*Ram Mangal Ghosh* v. *Lakhi Narain Saha*, 1 W. R., 71); but if he had acquired a right of occupancy by cultivating or holding, he did not divest himself of this right by sub-letting the land (*Durga Prasanno Ghosh* v. *Kali Das Datta*, 9 C. L. R., 449). A man would not now be held to be a tenure-holder merely because he sub-lets. If he was let into the land for the purpose of cultivating it himself, he would be a raiyat, whether he at once sub-let it or not. The lease which the occupancy-raiyat granted was only binding as between him and his lessee. It was not binding against his superior landlord (*i. e.*, tenure-holder or proprietor), and did not affect any legal right, which the latter might possess; though if the superior landlord dispossessed the under-raiyat without the assistance of the law, he was guilty of trespass. (*Damri Sheikh* v. *Bissessar Lal* 13 W. R., 291.) But if the occupancy-raiyat sub-let with his landlord's consent, the case was different. In *Nehalunnissa* v. *Dhanu Lal Chaudhuri* (13 W. R., 281), it was said that when a lessor gives his lessee power to sub-let, and the latter sub-lets, the sub-lessee obtains rights against both, of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. Where a lessee sub-lets land, the sub-lessees can have no more right to use the land in contravention of the terms of the original lease than their lessor had. (*Monindro Chandra Sirkar* v. *Manirudin Biswas*, 20 W. R., 230; 11 B. L. R., App., 40.) It was also held that a lessee cannot make an under-lease for a longer time than his own lease, nor is he the agent of the landlord so as to bind him by granting leases for any time he may think fit. (*Harish Chandra Rai* v. *Sri Kali Mukharji*, 22 W. R., 274.) The provisions of sec. 85, however, to a certain extent, set aside this ruling. In the same case it was said that, where an under-lease specifies no term of tenancy, it cannot be construed to have effect beyond the interest of the grantor. In *Sarat Sundari Debi* v. *Binny* (25 W. R., 347) it was laid down that no farmer can, during the term of his lease, create for himself a sub-tenure, which is to endure after the lease expired, to the prejudice of the owner, whose *locum tenens* he is. Both these rulings would still seem to be good law.

All raiyats may sub-let.—It is to be observed that, under the provisions of the present section, the right of sub-letting is not restricted to occupancy-raiyats.

All raiyats, but no under-raiyats, have now the right of sub-letting their lands.

Acquisition by under-raiyat of occupancy-rights and transferability of such rights —As to the acquisition by under-raiyats of occupancy-rights as against raiyat-landlords, and as to the transferability of their rights without their raiyat-landlord's consent, see the note to sec. 49, p. 99.

Further provisions of present law.—Under proviso (3) to sec. 121, a landlord cannot distrain the crop of any part of a holding which the tenant has sub-let with the landlord's written consent; and under sub-sec. (5), sec. 136, a landlord shall not be deemed to have consented to his tenant's sub-letting the holding, or any part thereof, merely by reason of his having received an amount deposited by an inferior tenant to release his property from distraint Further, in sec. 138 it is provided, that when land is sub-let, and any conflict arises between the rights of a superior and of an inferior landlord, who distrain the same property (that is, in cases in which the sub-letting has taken place without the superior landlord's consent, in which cases only he can distrain), the right of the superior landlord will prevail. Under the provisions of cl. (*e*), sub-sec. (3), sec. 178, nothing contained in any contract made after the passing of this Act can take away the right of an occupancy-raiyat to sub-let, subject to, and in accordance with, the provisions of this Act.

Surrender and Abandonment.

Surrender.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his lordlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely :—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

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(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Relinquishment under the former law.—Under the former law, any raiyat who desired to relinquish the land held or cultivated by him could do so provided he gave due notice in writing of his intention in or before the month of Jeyt, in districts where the Fasli year prevails, or in or before the month of Poush, in districts where the Bengali year prevails. The raiyat could serve this notice himself ; but if the landlord or his agent refused to receive the notice and to sign a receipt for the same, the raiyat could apply, on plain paper, to the Collector, who had then to serve the raiyat's notice of relinquishment on the landlord. If personal service could not be effected, it had to be attached to his usual place of residence or his office for collecting rent or at some conspicuous place at the village. A mere verbal notice was not sufficient. (*Bonomali Ghosh* v. *Dilu Sirdar*, 24 W. R., 118.) But in the case of an *utbandi* raiyat upon whom a notice to pay enhanced rent or to quit the land had been served, a verbal intimation to the landlord's agent of the raiyat's intention to quit the land, was held to be a sufficient compliance with sec. 19, Act X of 1859. (*Kenny* v. *Ishar Chandra Poddar*, W. R., Sp. No., Act X, 9.) But it was necessary that notice to the landlord should be followed by relinquishment. Mere proof of notice of relinquishment, without proof of actual relinquishment, did not protect the raiyat from liability for rent (*Nobin Chandra Rai* v. *Lakhi Priu Debi*, 1 W. R., 20); and mere relinquishment of the land did not excuse him from payment of rent, if he was otherwise liable, unless he made terms with his landlord (*Mahomed Azmal* v. *Chandi Lal Pandi*, 7 W. R., 250.) But if, in this case, the landlord let the land to other raiyats, the original tenant could not be held liable for the rent. (*Mahomed Ghazi* v. *Shankar Lal*, 11 W. R., 53.) In one case, however, it was said that when a tenant was found to have taken steps required by law in furtherance of his intended relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it *khas*, or by letting it to others. (*Erskine* v. *Ram Kumar Rai*, 8 W. R., 221.) Abandoning the land, and neither cultivating nor paying rent for it, was held to be tantamount to relinquishment, and the raiyat could not,

in such circumstances, demand to be reinstated in possession on the ground that he had never formally relinquished the land. (*Manirudin* v. *Mahomed Ali*, 6 W. R., 67; *Nadiar Chand Poddar* v. *Madhu Sudan De Poddar*, 7 W. R., 153; *Haro Das* v. *Gobind Bhattacharji*, 3 B. L. R., App., 123; 12 W. R., 304; *Mati Sunar* v. *Gandar Sunar*, 20 W. R., 129; *Ram Chang* v. *Gora Chand Chang*, 24 W. R., 344; *Boidinath Manjhi* v. *Aupurna Debi*, 10 C. L. R., 15; *Ghulam Ali Mandal* v. *Golap Sundari Dasi*, I. L. R., 8 Calc., 612; 10 C. L. R., 499.) Abandonment is now distinguished from relinquishment or surrender, and is dealt with in the following section.

Part of holding cannot be surrendered.—The former law did not allow the raiyat to relinquish a part of his holding, and it was, therefore held that, as long as he retained possession of any part of his *jote*, he was liable for the rent of the whole. (*Saroda Sundari Debi* v. *Mahomed Mandal*, 5 W. R., Act X, 78.) But in one case it was said that when a raiyat, holding a considerable quantity of land, wishes to relinquish a portion, he must specify what portion he relinquishes in order to relieve himself of the liability to pay rent. (*Habila Sirkar* v. *Durga Kant Majumdar*, 11 W. R., 456.) This would seem to imply that a raiyat could relinquish a portion of his holding. But in a more recent case (*Anarullah Sheikh* v. *Kailash Chandra Basu*, I. L. R., 8 Calc., 118), the contrary was very clearly laid down. In this case, three plots of land were let to A under a kabulyat. A relinquished two plots, but admitted to being in possession of one, alleging that the kabulyat had been obtained by fraud and misrepresentation. But it was held that as the lease was an entire contract, one portion only could not be repudiated on the ground of fraud; if the tenancy was to be repudiated on the ground of fraud, it must be avoided *in toto*. In this case it was also said that, when a party to a contract of tenancy desires to have it rectified or altered, the suit should be brought under sec. 31 of the Specific Relief Act. From the terms of sub-sec. (7) of this section, it is evident that, under the present law also, the raiyat cannot surrender a part of his holding without the consent of his landlord.

Notice of surrender, and how it may be served.—The raiyat may serve the notice of his intention to surrender under sub-sec. 2 personally in writing, but where he serves it through the Civil Court, under the provisions of sub-sec. (4), it will be served as a summons on a defendant under the Code of Civil Procedure, and be subject to the same process-fee. (See Chap. V, Rule 9, of the Rules framed by Government under the Bengal Tenancy Act, Appendix I.)

Applications for service of notices of relinquishment exempt from Court-fees.—Under cl. (12), sec. 19, Act VII of 1870, applications for service of notices of relinquishment are exempt from Court-fees.

In case of joint tenants who may surrender.—Where a joint lease was given to many persons with an entirety and equality of interests among the tenants, the resignation of some of the joint lessees does not necessarily operate to void the lease. (*Mohima Chandra Sen* v. *Pitambar Shaha*, 9 W. R., 147.) Where a member of a joint family is registered as a *jotedar* in a zamindar's serishta, not as for himself only, but as manager for the family, his relinquishment of the *jote* is not sufficient in law to authorize the zamindar to make arrangements with any others he pleases. (*Baikant Nath Das* v. *Bissonath Manjhi*, 9 W. R., 268.)

Protection against collusive surrender.—Sub-section (6) is intended to protect sub-lessees against collusive surrender,—the term "incumbrance" under

sec. 161 meaning, when used in reference to a tenancy, "any lien, sub-tenancy, easement, or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in sec. 160." Under the former law it was held, that when a tenant, who held land for a term, sublet that land, he parted with his own interest therein to the extent of the interest created by the sub-lease, and consequently he could not determine the interest of his under-tenant by surrendering his own term to the landlord. (*Hiramani* v. *Ganganarain Rai*, 10 W. R., 384.) From the terms of sub-sec. (6), however, it would appear that a raiyat by surrendering his holding to the landlord, can always determine his sub-lessees' interests in the land, unless they have protected themselves by registering their sub-leases. This is an important point, for it is a growing practice in Behar for indigo planters to sub-lease land from raiyats, paying them a bonus and an annual rent. If sub-tenants do not protect themselves by registering their sub-leases, they may find themselves, through the surrender of their holding by their raiyat-landlords, deprived of both their land and their money.

This section applies only to raiyats.—It is further to be noticed that the provisions of this section apply only to raiyats, *i.e.*, to occupancy or non-occupancy-raiyats. It is also only a "holding" which can be surrendered, and the term "holding" is applicable only to the interest of a "raiyat." Hence, it would appear that the provisions of this section do not apply to under-raiyats, nor yet to tenure-holders. As to the latter, no change is made in this respect on the former law, for, in *Hira Lal Pal* v. *Nilmani Pal* (20 W. R., 383), it was held that it was not open to a patnidar, of his own choice, to throw up his patni, and by so doing escape from his liability to pay rent. The contract, though not indissoluble, it was said, could only be dissolved by an act of the Court, and after proper enquiry. Again in *Jadunath Ghosh* v. *Schoene, Kilburn & Co.* (I. L. R., 9 Calc., 671 ; 12 C. L. R., 343), it was laid down, that a tenure under a *dar-maurasi mokarari* lease of land, which was not let for agricultural purposes, could not be put an end to by mere relinquishment on the part of the lessee, even after notice to the landlord. In this case it was further held by Field, J., that the principle laid down in *Hira Lal Pal* v. *Nilmani Pal*, that a patnidar could not, of his own option, relinquish his tenure, was applicable to all intermediate tenures, other than farming leases, between the zamindar and cultivator of the soil.

It is to be noted that, under the provisions of cl. (*c*), sub-sec. (3), sec. 178, no raiyat can, after the passing of this Act, contract himself out of the provisions of this section.

Raiyats bound by a lease or other agreement.—The provisions of this section, or at least of sub-secs. (1) to (4) of it, apply exclusively to raiyats not bound by a lease or other agreement for a fixed period. It is silent as to raiyats bound by a lease or other agreement for a fixed period. Hence, the following rulings relating to raiyats so bound will be found useful. A raiyat, who has taken a lease in writing for a fixed period cannot throw it up during its currency. (*Kashi Singh* v. *Onraet*, 5 W. R., Act X, 81.) A raiyat is under no obligation to give any notice under sec. 19, Act X of 1859, or under sec. 20, Act VIII of 1869, B. C., merely to entitle him to give up the land at the termination of a short lease under which he holds. A landlord claiming rent from such raiyat for a period after the expiry of his lease is bound to prove that the latter held on subsequently to the term of his lease. (*Tilak Patak* v. *Mahabir Pandi*, 15 W. R., 454 ; 7 B. L. R., App., 11.) A perpetual contract by a lessee for his heirs,

reciting that they shall never relinquish the *jote*, cannot operate against sec. 19, Act X of 1859, which says that any raiyat may relinquish his *jote*, if he does so in a legal manner. (*Gopal Pal Chaudhri* v. *Tarini Prasad Ghosh*, 9 W. R., 89.) A tenancy which is to continue year by year is a continuing tenancy, so long as the parties are satisfied, and though terminable at the option of either party at the end of any year is not *ipso facto* terminated at the end of every year. (*Maloddi Noshyo* v. *Ballabi Kant Dhar*, 13 W. R., 190.)

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly ; and the Collector shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice ; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the land-

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lord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

The provisions of this section are intended, it has been said, "to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it has been permanently abandoned or not. On the one hand, there is the danger to the landlord of an action for dispossession, if he lets the land hastily to a new tenant," and the provisions of sub-sec. 1 are intended to guard against this danger. "On the other hand, there is the danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat." (*Government of India Gazette*, March 14th, 1885, Supplement, p. 60.) This is guarded against by the provisions of sub-sec. 2, and a special remedy, in case of dispossession actually taking place, is provided by sub-sec. (3).

In their Land Revenue Administration Report for 1887-88, the Board of Revenue point out that the provisions of this section are rarely had recourse to, for as "the law imposes no sanction or penalty, the zamindar probably sees no reason why he should not enter upon abandoned land without filing a notice, and, ordinarily, therefore, no notice is given." (Para. 161, p. 29.)

Rulings under the former law.—There are numerous rulings under the former law that distinct abandonment of a holding and cessation to pay rent for it are equivalent to surrender, and justify a landlord in letting a raiyat's land to a new tenant, and the raiyat has no right to ask to be reinstated in his land. (See *Chandra Mani Nyabhushan* v. *Sambhu Chandra Chakrabarti*, W. R., Sp. No., 270; *Manirudin* v. *Mahomed Ali*, 6 W. R., 67; *Harihar Mukharji* v. *Judonath Ghosh*, 7 W. R., 114; *Nadiar Chand Poddar* v. *Modhu Sudan De Poddar*, 7 W. R., 153; *Haro Das* v. *Gobind Bhattacharji*, 12 W. R., 304; 3 B. L. R., App., 123; *Mati Sunar* v. *Gundar Sunar*, 20 W. R., 129; *Ram Chang* v. *Gora Chand Chang*, 24 W. R., 344; *Boidinath Manjhi* v. *Aupurna Debi*, 10 C. L. R., 15; *Ghulam Ali Mandal* v. *Golap Sundari Dasi*, I. L. R., 8 Calc., 612; 10 C. L. R., 499.) But the non-cultivation of a small portion of an ancestral *jote* by the admitted holders, owing to their minority, does not amount to relinquishment. (*Radha Madhab Pal* v. *Kali Charn Pal*, 18 W. R., 41.)

Effect of non-payment of rent.—It is to be observed that though non-payment of rent does not necessarily cause a forfeiture of a raiyat's rights unless he has abandoned his land (*Musyatullah* v. *Nurzahan*, I. L. R., 9 Calc., 808; 12 C. L. R., 389), yet it is a matter to which great weight is always attached, when the question as to whether a raiyat has really intended to abandon his holding or not, has to be decided, and, in the case of *Hemnath Datta* v. *Ashgar Sirdar* (I. L. R., 4 Calc., 894,) non-payment of the rent of land, which was submerged for a number of years, was regarded as evidence of an intention to abandon it, and to have caused the forfeiture of all occupancy-rights in it. When an occupancy-raiyat, after transfer of his right to a stranger, takes a sub-lease from him, and so remains in possession, this will not amount to abandonment so as to entitle the landlord to re-enter. (*Srishtidhar Biswas* v. *Madan Sirdar*, I. L. R., 9 Calc., 648.)

Form of notice.—The form of notice prescribed under sub-sec. (2), and the rules made by the Local Government for its service will be found in Appendix I. (See Sched. I, and Rule 10, Chap. V of the Government Rules under the Tenancy

Act.) The Board of Revenue, in a letter to the Commissioner of Patna (No. 310, dated 6th August, 1886), have pointed out that the law does not require that the notice referred to in this sub-section should be accompanied by a petition, and there is, therefore, no necessity for the landlord's presenting a petition. The notice need not be stamped. But if the landlord should file a petition, it should be stamped under art. 1 (*b*), Sched. II of the Court-fees' Act, (*i. e.*, with an 8 as. Court-fee label.)

Protection against collusive abandonment.—Sub-section (4) is intended to protect under-raiyats against collusion between the landlord and their raiyat-lessor. It is herein provided that a landlord shall not be entitled to avoid a sub-lease until "the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding." But it is only registered sub-leases that are so protected. Further, it seems doubtful whether the provisions of this clause will effectually protect sub-lessees against the collusion in question. For, when the lessor-raiyat absconds, the landlord can call upon the sub-lessee to pay all arrears of rent which he alleges are due from the raiyat, and the sub-lessee must either pay whatever sum the landlord demands, or let him avoid his sub-lease. There would seem to be no check upon the landlord, if his demand be confined to three years' rent; for *ex hypothesi*, the only person other than the landlord who knows what is really due (viz., the raiyat-lessor) has either absconded, or is in collusion with the landlord. In the case of a sub-lease executed with the landlord's consent, the lessee obtains rights against both his lessor and his lessor's landlord, of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. (*Nihallunnissa* v. *Dhanu Lal Chaudhri*, 13 W. R., 281.) But when the sub-lease has been executed without the landlord's consent, it does not bind him; but if he dispossesses the sub-lessee without the sanction of the law, he is guilty of trespass. (*Damri Sheikh* v. *Bisheshar Lal*, 13 W. R., 291; *Jamir Ghazi* v. *Gonai Mandal*, 12 W. R., 110.)

Sub-division of tenancy.

Division of tenancy not binding on landlord without his consent.
Sec. 27, Act X, 1859; sec. 26, Act VIII, B. C., 1869.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

This makes no change in the former law, under which no division or distribution of rent was valid and binding without the consent, in writing, of the zamindar or superior tenant. (*Watson & Co.* v. *Ram Sundar Pandi*, 3 W. R., Act X, 165; *Upendro Mohan Tagore* v. *Thanda Dasi*, 3 B. L. R., A. C., 349; 12 W. R., 263; *Dasorathi Hari Chandra Mahapattro* v. *Ram Krishna Jana*, I. L. R., 9 Calc., 526.) There are, however, some cases, which appear to substitute consent by conduct for the written consent expressly required by sec. 26, Act VIII of 1869. (See *Hari Mohan Mukharji* v. *Gora Chand Mittra*, 2 W. R., Act X, 25; *Bharat Rai* v. *Ganga Narain Mahapattra*, 14 W. R., 211; *Nobo Krishna Mukharji* v. *Sriram Rai*, 15 W. R., 255.) But in *Gaur Mohan Rai* v. *Anand Mandal* (22 W. R., 295), it was said that the fact of some of the joint occupiers of a joint-tenure paying portions of the rent due from all, corresponding with the shares for which the joint occupiers are liable,

cannot prevent the zamindars from suing them all, or making them all answerable for the joint-debt. And in *Lalan Mani* v. *Sona Mani Debi* (22 W. R., 334), it was held that if certain tenures alleged to be separate tenures, had been indissolubly connected at the time of the original holder of them, and the zamindars in receiving rent from the holders of them had dealt with them only as the representatives of the original owner and as payers of component parts of the aggregate rent, then this would go to show that there was really but one tenure, and its division and the distribution of its rental would not be binding against the zamindars. Even when occupancy-rights are transferable by custom, the division of a tenure or holding, or distribution of the rent payable in respect thereof, will not be lawful ; and if the tenant sub-divides and transfers to different persons, the landlord is entitled to treat the transferees as trespassers and to re-enter. (*Tirthanand Thakur* v. *Moti Lal Misra*, I. L. R., 3 Calc., 774.)

Ejectment.

No ejectment except in execution of decree. Sec. 21, Act X, 1859; sec. 22, Act VIII, B. C., 1869.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

As the interest of an "under-raiyat" is not a "holding" (see sec. 3, cl. 9), there is room for dispute as to whether this section applies to an under-raiyat or not. It was, however, probably intended so to apply. Under the former law, it was only a raiyat having a right of occupancy, or one holding under a pottah, the term of which had not expired, who could not be ejected otherwise than in execution of a decree. The liability of a tenure-holder to ejectment was to be determined by the conditions of his lease. (*Balaram Das* v. *Jogendro Nath Mallik*, 19 W. R., 349.) A non-occupancy raiyat, or a tenant for a term, holding on after the expiry of the term, could always be ejected by the landlord after the service on him of a reasonable notice to quit.

The grounds on which a tenant can be ejected are detailed in secs. 10, 18, 25, 44, 49, and 66 of this Act, and under cl. (*c*), sub-sec. (1), sec. 178, nothing contained in any contract, made either before or after the passing of this Act, shall entitle any landlord to eject a tenant otherwise than in accordance with the provisions of this Act. A landlord cannot eject a tenant from a portion only of his holding. (*Atal Chandra* v. *Kedarnath Mukharji*, 2nd November, 1887.)

Remedies for illegal ejectment.—If a tenant is ejected otherwise than in execution of a decree, he can recover possession by bringing a suit under sec. 9, Act I of 1877 (the Specific Relief Act), within six months from the date of ejectment. (*Jonardan Acharji* v. *Haradhan Acharji*, 9 W. R., 513 ; B. L. R., F. B., 1020.) But such a suit cannot be brought against Government. If, however, the tenant allows six months to elapse without bringing a suit under the Specific Relief Act, it would appear that an occupancy-raiyat will be able to sue for possession within two years' time under art. 3, Sched. III of this Act. An occupancy-raiyat unduly dispossessed by the landlord has also, under sec. 87 of this Act, the same time and a non-occupancy-raiyat has, in similar circumstances, six months from the date of publication of the landlord's notice, prescribed by cl. 2 of the section, within which to sue for recovery of possession. But there is no provision in this Act for a tenure-holder, a raiyat holding at fixed rates, or a non-occupancy-raiyat suing to recover possession of a tenure or holding, from which

he has been dispossessed otherwise than in execution of a decree. Tenants of these classes, therefore, if they have failed to avail themselves of the remedy afforded them by the Specific Relief Act, must, in such circumstances, sue under the provisions of the Limitation Act, (XV of 1877), and prove their title before they can recover possession. The period of limitation applicable to them will be twelve years under art. 142, Sched. II.

Landlords cannot forcibly eject trespassers.—It should always be remembered by all landlords that they cannot eject even persons who are in the position of trespassers without having recourse to law. (*Jonardan Acharji* v. *Haradhan Acharji*, 9 W. R., 513 ; *Nando Kishor Lal* v. *Sheo Dyal Upadhya*, 11 W. R., 168 ; *Damri Sheikh* v. *Bisheshar Lal*, 13 W. R., 291 ; *Arjun Bonik* v. *Ram Nath Karmakar*, 21 W. R., 123.) They should sue them for direct possession, and if such persons have occupied the land for any period, they should, in strict law, sue them not for rent, but for use and occupation of the land, or for mesne profits. There are, however, several rulings of the High Court to the effect that landlords may sue for rent persons who make themselves their tenants by use and occupation of their land. (*Lakhi Kant Das* v. *Samirudin Lashkar*, 21 W. R., 208 ; 13 B. L. R., 243 ; *Lalan Mani* v. *Sonamani Debi*, 22 W. R., 334 ; *Swarnomayi* v. *Dinonath Gir Sanyasi*, I. L. R., 9 Calc., 908.) Now, under the provisions of sec. 157 of this Act, when a plaintiff institutes a suit for the ejectment of a trespasser, he may ask the Court to fix a fair and equitable rent for the land in his possession as an alternative relief to ejectment.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

Sec. 9, Act VI, B. C., 1862 ; sec. 25, Act VIII, B. C., 1869.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely) :—

(*a*) Where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area ;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

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(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Lakhiraj land can be measured.—Formerly, a landlord had no right to measure *lakhiraj* land (*Rang Lal Sahu* v. *Sridhar Das*, 11 W. R., 293; 3 B. L. R., App., 27; *Ghulam Khejar* v. *Erskine*, 11 W. R., 445; *Khagendra Nath Mallik* v. *Kanti Ram Pal*, 14 W. R., 363), and a rent-free-holder might, in virtue of a grant of ten bighas, be holding double as much or more. Now, a landlord can measure all the lands of his estate, whether rent-free or not, provided it be revenue paying; but he is not entitled to measure revenue-free land comprised within the external boundaries of his estate, for such revenue-free lands form a separate estate. (See *Prasannomayi Debi* v. *Chandranath Chaudhri*, 10 W. R., 361; 2 B. L. R., S. N., 5.)

One of two or more joint-landlords cannot measure.—A part-proprietor of an estate was competent, under sec. 38 of Bengal Act VIII of 1869, to apply for measurement of its lands after making the remaining proprietors parties to the proceedings. (*Abdul Hossein* v. *Lal Chand Mohtan Das*, I. L. R., 10 Calc., 36; 13 C. L. R., 323.) But he cannot do so now, for, under the provisions of sec. 188, anything which the landlord is, by this Act, required or authorized to do must, when two or more persons are joint-landlords, be done either by all these persons acting together, or by an agent authorized to act on behalf of both or all of them. It can also be done on their behalf by a common manager appointed under sec. 95.

Holdings under the utbandi or bhaoli systems can be measured annually.—Clause (*b*), sub-section (2) allows a landlord to measure *utbandi* (sec. 180) or other holdings, in which the area under cultivation varies from year to year, as often as he may wish, and also permits the annual measurements, which are necessary where the *bhaoli* system prevails.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

Sec. 9, Act VI, B. C. 1862; sec. 37, Act VIII, B. C., 1869.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Under the former law, if a tenant, after the issue of an order enjoining his attendance, neglected to attend and point out his land, it was not competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence. However, in a recent case, *Alimuddin* v. *Kali Krishna*

Tagore (I. L. R., 10 Calc., 895), a superior owner of *char* land and his tenants, who held in *howladari* tenure, had agreed, with reference to alluvion and diluvion, that the *char* should be measured from time to time on notice, and that, unless the tenants should give a separate *daul kabulyat* for the land found to be accreted, the superior landlord should take possession of it. In pursuance of this agreement, a measurement was made by the superior landlord, but incorrectly. The tenants, however, raised no objection at the time; but subsequently, when a suit was brought against them by the superior owner for possession of the accreted land, they set up the defence that the measurement had been made in their absence, and was incorrect. But it was held that they could not defeat the suit merely on the ground of the incorrectness of the measurement, there being no fraud, but that they were entitled to ask the Court to decide what the amount of the property was which the plaintiff was entitled to recover.

The terms of the present section are in accordance with the principle of the above decision, for it substitutes a disputable or rebuttable presumption, for the conclusive or absolute one, raised by the former law, which the High Court in the above decision virtually set aside.

For the Court to which the landlord's application should be made, see sec. 144 (2).

For circumstances to be considered in determining the amount of alteration in rent allowable in consequence of alteration in area shown by measurement, see sec. 52.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Standard of measurement.—The measurements under Act VIII (B.C.) of 1869 had to be made according to the standard pole of measurement of the pargana (sec. 41), and in case of dispute it was held, that the Collector being the depositary of the standard pole of each pargana, it was exclusively within his province to determine which was the standard of each pole (*Taraknath Mukharji* v. *Meydi Biswas*, 5 W. R., Act X, 17); but this ruling was set aside by subsequent decisions of the High Court, and the Civil Courts had to decide the question of standard in each case. Under the present law, the Local Government may, after

local enquiry, make rules declaring the standard or standards of measurements locally in use in any local area, but no rules under sub-sec. (3) have yet been made. The preparation of such rules requires careful consideration and local enquiry.

Local standards of measurement.—In some districts like Chittagong, the term 'bigha' is almost unknown. Measurements are made by the local standard of *kanies* and *droons*, and the *droon* in one part of the district is four times the size of the *droon* in another. In the greater part of Manbhoom, no standard of land-measurement is recognised, land being there let according to "*rekhs*" or "*kunies*," or according to "*kats*." The "*rekh*" is properly the sixteenth part of the village area, but in practice is often more. The "*kat*" is an area according to quantity of seed sown, and ought to be about three bighas. In Bengal, the standard bigha contains 14,400 square feet. In Behar, the bigha varies in different districts, in different parganas of the same district, in different villages of the same pargana, and, sometimes, even in different estates in the same village, and may be anything from a third of an acre to an acre and a half, or more. The bigha is a measure, in every case, of twenty *laggies* in length by twenty *laggies* in breadth, but the *laggi* may contain any number of *haths*, or nominal cubits, from four up to nine, or more. Not only is the varying number of *haths* to the *laggi* an element of uncertainty, but the length of the *hath* itself is not a fixed entity. Nominally, the *hath* is a cubit of eighteen inches, but in practice, its length is determined by the length of a particular individual's forearm; so that it is not uncommon in Behar to find a landlord and tenant disputing at the very outset of a measurement over the selection of the individual whose arm is to be taken as the standard *hath*. It would be well for those whose duty it is to settle fair rents, or to decide how far an alteration in rent is equitably claimable, because of alteration in nominal area, to bear these facts in mind. It is often argued that if a tenant had agreed to pay so much per bigha of land at some former time, and it is afterwards found by measurement that he is actually holding a bigha and a quarter, it is obviously just that his rent should be proportionately increased. It would, no doubt, be so, if a bigha were a mathematically defined area, but this it ordinarily is not. If A let to B a definite plot of land ten years since, and, according to the rude system of measurement above described, called it a bigha, and C, now taking A's place, re-measures the same plot, and, according to an equally vague, or it may be more accurate system, calls the same plot a bigha and a quarter, it is obvious that the mere change in nomenclature would not be an equitable ground for increasing the rent; nor, in the contrary case, for reducing it. The great variety in the lengths of local standards of measurement is, it is believed, due, like the existence of numerous *abwâbs*, to the aversion on the part of people of the country to changing established rates. If an enhancement is unavoidable, raiyats will pay the increased amount demanded, by way of *abwâbs* or *kharchas*, much more willingly than by way of an increased rate of rent. On the other hand, if a zamindar is, from failure of crops, deterioration of lands, absconding of tenants, or other cause, obliged to give an abatement of rent, instead of reducing the rate per bigha he prefers, by increasing the length of the *laggi*, to give more land in the nominal bigha, thus leaving the rates unchanged. The *laggi*, or pargana pole, which is sometimes found to be deposited in the Collector's office, cannot then be accepted as conclusive, or, indeed, any proof of the length of the standard of measurement now current in a particular village, neither can the Revenue Survey or *Thakbust* maps be so accepted. At best these would afford some indication of what was supposed to be the standard prevailing when the Revenue Survey was made.

It will be in the power of a Court or Revenue-officer under the latter part of sub-sec. (1) to direct that the measurement be made by any such standard as may be specified in the order for measurement.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

Secs. 26 and 27, Reg. V of 1812.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager :

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.*

VII (B. C.) of 1876.*

Previous enactments as to managers.—This section applies to cases in which there is such a dispute between co-owners as is likely to lead to inconvenience to the public or injury to private rights, in which case a common manager may be appointed by the District Judge. The provisions of this and of the two following sections make no change in the law with regard to the appointment of managers of estates. The law on this point, in regard to estates, has been substantially as in these sections from times anterior to the Permanent Settlement. In the 22nd paragraph of the Code of Regulations, relative to the Decennial Settlement (Colebrooke's Supplement, p. 318), provision is made for managers in joint-estates. The provision was re-enacted in secs. 26 and 27, Reg. V of 1812, and extended in Reg. V of 1827. Act XVI of 1874 repealed the procedure provided by Reg. V of 1827, but not secs. 26 and 27 of Reg. V of 1812. Reg. V of 1812, therefore, remained inoperative. The present Act repeals the sections of Reg. V of 1812 remaining in force, and in secs. 93 to 100 re-enacts them, and provides a procedure for giving effect to them. The extension of these provisions to tenures is, however, a modification of the law, and the proviso is, of course, new.

An order rejecting an application under section 93 is not appealable.—It has been recently held that an application under sec. 93 of the Bengal Tenancy Act, 1885, is not a suit between landlord and tenant within the meaning of sec. 143, and no appeal lies from an order rejecting such an application. (*Hossain Baksh* v. *Mutukdhari Lal*, I. L. R., 14 Calc., 312.)

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof, or

(*b*) in any case appoint a manager.

Power to nominate person to act in all cases under clause (*b*) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section ; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

*IX (B. C.) of 1879.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act,* 1879, as relates to the management of immoveable property, shall apply to the management.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to make rules.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

The Rules framed by the High Court under this section are printed in Appendix III.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Aims and objects of a Survey and Record-of-rights.—The provisions of this chapter authorise the Local Government, with the previous sanction of the Governor-General in Council in any case, and without such sanction in certain specified cases, to make an order directing that a survey and record-of-rights be made in any local area.

The Government of India, in their despatch to Her Majesty's Secretary of State for India, No. 6 of the 21st of March, 1882, para. 100, describe the aims and objects and the advantages of a survey and record-of-rights to be—first, that it will, by putting an end to the uncertainty which promotes rent-disputes, efficiently protect the raiyats, while enabling the landlords to realise their just dues with greater facility; and secondly, that it will afford improved knowledge of the facts of rural economy. "Where," they remarked, "local officers possess a full and accurate knowledge of local facts, and where they are, therefore, able to pursue a vigorous method of administration, these advantages are very commonly due to their being supplied with information reaching to the detail of every field, and to the existence of numerous and disciplined bodies of subordinate native officials, who are able to collect the various particulars within their cognisance as materials to suggest fairly safe generalisations. Whether we have regard to the prevention of famine, or to the waste of life or waste of money which may directly result from official ignorance or uncertainty as to the approach or dimensions of famine; whether we look to the need for active administration, which shall search out and expose deep-seated evils, or to the lack of some solid assurance that facts affecting agricultural interests shall be so notorious and indisputable that none shall be able to pervert them to the injury of the weak, we perceive, in the circumstances of many portions of Bengal, and particularly of Behar, strong reasons for placing the Bengal officials on a level, in point of administrative advantages, with their brother-officers in other provinces. We seek no fiscal advantage, but the prevention or diminution of human suffering."

The Secretary of State, in para. 19 of his despatch No. 54, dated 17th August, 1882, observed, in reply, that, while fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field-survey, he could not avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, had long ago entirely disappeared, might prove greater than was anticipated; but he sanctioned an experimental commencement of the work in the Patna Division of the province of Behar.

Procedure for survey and record-of-rights as originally proposed.—This chapter, the provisions of which are new in Bengal, deals with the procedure for the preparation of a record-of-rights and settlement of rents. "As the Bill originally stood, these processes were separate, and were provided for in separate chapters. The Revenue-officer undertaking a record-of-rights had no power to settle rents, or to decide disputes. He had only to record what he found to be the existing facts of each holding, and the entries in such a record were to be presumed to be correct, till the contrary was proved. This process, however, was to be supplemented by another called the settlement of rents."

Procedure prescribed by Act.—It is not necessary to describe the successive steps by which this proposed procedure was altered. It is sufficient to explain the procedure as it stands at present, which is as follows :—"What has been done has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, and it does not appear that the tenant is holding land in excess of or less than, that for which he is paying rent, and neither the landlord nor the tenant applies for the settlement of a fair rent, the Revenue-officer will record what he finds,—he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts. Where a dispute arises, or it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent, or either of the parties applies for the settlement of a fair rent, the Revenue-officer will decide the dispute or settle a fair rent, as the case may be, on the same grounds, by the same rules, and with the same procedure as a Civil Court. His decision will be liable to appeal to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal, the High Court may settle a new rent ; but, in so doing, is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low ; but if a second appeal is preferred, as it may be, on the ground that the Special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be. The decision of the Revenue-officer in disputed cases, and when he settles a fair rent will, subject to these appeals, have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for fifteen years." (Selections from papers relating to Bengal Tenancy Act, 1885, p. 424.)

This chapter applies to settlements.—The provisions of this chapter will apply to settlements of rents for the purpose of settling land revenue, as well as to settlements of rents in private estates, and now that Act VIII (B. C.) of 1879 is repealed, will ordinarily be the only procedure at the disposal of Government for that purpose. The repeal of Act VIII (B. C.) of 1879, however, leaves Government the same powers, in addition to those given by this chapter, as regards settlement of land revenue, as distinguished from the settlement of raiyats' rents, as it held before that Act was passed, so that Government may now proceed if it thinks fit, under the old Settlement Regulations, for the purpose of determining the amount of Government revenue, which it may think proper to demand, without having recourse to this chapter, but raiyats' rents cannot be enhanced or reduced under those Regulations. If Government wishes to settle raiyats' rents, and not merely to ascertain existing rents, the only procedure open to it is that contained in this chapter, and if it elect to proceed under the provisions of this chapter, fair rents must be settled for all tenants where a settlement of land revenue is being made in respect of the local area.

Importance of the rules under this chapter.—The rules under this chapter, which, with the Board of Revenue's instructions thereon, will be found in Appendix I, "are," remarked the Committee appointed to consider the rules under the Act, "of great importance, as they will not only apply to the survey and record-of-rights about to be taken in hand in Mozufferpore, but they will also, in the major-

ity of cases, form a code of instructions for the guidance of officers engaged in making settlements of land revenue in any of the districts to which the Act extends. The instructions contained in the Board's Rules will be supplementary to the rules under the Act, it being manifestly impossible to frame the latter in such detail as to form a complete manual for the guidance of officers in every particular. The rules declare that all orders of Revenue-officers, passed in the discharge of any duty under the Act, shall be subject to the supervision and control of the Board of Revenue; and that the orders of each Revenue-officer shall be subject to the supervision and control of the Revenue-officer to whom the Board may declare him to be subordinate. It will be seen, on reference to the rules for guidance of Revenue-officers acting under this chapter, that a record-of-rights and settlement of rents embraces a record of the character and extent of the interests of proprietors and proprietary mortgagees,—of the character and extent of the interests of tenure-holders and under-tenure-holders,—of the area of the holding and of the rent payable by every raiyat and under-raiyat,—and of the status of every raiyat and under-raiyat; also the determination of proprietors' private lands and the settlement of fair rents on the application of either landlord or tenant, or without such application on the motion of the Revenue-officer himself, when it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent.

Settlement law of Bengal.—The settlement law of Bengal applicable to the districts in which the Tenancy Act is in force, is now contained in Regulations VII of 1822, IX of 1825, and IX of 1833, supplemented by this chapter, the rules framed under it, and the instructions of the Board of Revenue relating to settlements; while the following are the Acts and Regulations applicable to settlements in districts in which the Tenancy Act is not in force.

(1)	Balasore, Cuttack, and Pooree.	Regulation VIII of 1793. „ XII of 1805 (applicable to Cuttack only). Regulation V of 1812. „ XVIII of 1812 (not applicable to Cuttack). Regulation VII of 1822. „ IX of 1825. „ XI of 1825. „ IX of 1833. Act VIII (B.C.) of 1879.
(2)	Darjeeling, Julpigoree (tract south of Teesta) Manbhoom, Hazaribagh, Lohardugga, and Singbhoom.	Act VIII (B.C.) of 1879.
(3)	Julpigoree (tract north of Teesta, *i.e.*, Bhutan Doárs).	Act XVI of 1869. „ VIII (B.C.) of 1879.
(4)	Sonthal Pergunnahs ...	Regulation III of 1872.
	Chittagong Hill Tracts ...	Act XXII of 1860. (Board of Revenue Settlement Manual, Rule 7, p. 3.)

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council, are the following (namely) :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs ;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards ; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Sub-section (2), clause (a).—Applications under sec. 101 (2) (*a*), should be presented to the Collector, who should deal with them in the first instance. (Board of Revenue's No. 278A of the 4th May 1887 to the Commissioner of Burdwan.)

It has been asked, what is "a large proportion of the landlords or tenants? It has been held by Government, on the authority of the Advocate-General, that half the landlords is a large proportion of them within the meaning of cl. (*a*) of this section. (See Government of Bengal's No. 2461-931 L. R., dated December 6th, 1886, to Secretary, Board of Revenue.)

Costs of survey and record of-rights.—When a survey of the estate of a ward or of a private proprietor is ordered under sec. 101 (2), cls (*a*) or (*c*), the applicant should deposit in the Local Treasury or give security for the payment of the expenses that may, from time to time, be required. The amount necessary for expenditure on the operations is then advanced by Government, and afterwards recovered from the parties, as the Local Government may direct by an order under sec. 114. If the amount deposited by the ward or other applicant exceeds the

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cost of the operations, the excess is refunded. When the application is under sec. 103, the applicant has generally to pay all the expenses.

Form of Security-bond.—The following forms of security-bond to be executed by proprietors of private estates and by managers of wards' estates, under sec. 101 (2) (*a*) have been prescribed by the Board of Revenue. These security-bonds need not be registered. (Board of Revenue's No. 279A of 31st August, 1888, to the Commissioner of Bhaghulpore.)

Form of security-bond to be executed by the proprietor of a private estate under sec. 101 (2) (*a*) of the Bengal Tenancy Act (VIII of 1885).

Know all men by these presents that I commonly called at present residing at in the town of son of the late am held and firmly bound unto the Secretary of State for India in Council in the sum of Rs. to be paid to the said Secretary of State his successors in office or assigns or his or their certain attorney or attorneys for which payment well and truly to be made I bind myself my heirs executors administrators representatives and assigns firmly by these presents sealed with my seal dated this day of and I do hereby for myself my heirs executors administrators representatives and assigns covenant with the Secretary of State his successors in office and assigns that if any suit shall be brought touching or concerning the subject-matter of this obligation or the condition hereunder written in any Court subject to a High Court the same shall and may at the instance of the said Secretary of State be removed into tried and determined by the High Court of Judicature at Fort William in Bengal in its extraordinary Original Civil Jurisdiction.

Whereas orders have been passed by the Lieutenant-Governor of Bengal acting for and on behalf of the said Secretary of State under section 101 (2) (*a*) of the Bengal Tenancy Act (VIII of 1885) that a survey shall be made and a record-of-rights prepared in respect of all lands which are held jointly by the of and the minor proprietors of the estate and of all lands which are the exclusive property of the said minor proprietors of the said estate in the district of and whereas it is necessary to provide for the repayment to the said Secretary of State of the expenses incidental to the carrying out of the said survey and record-of-rights which in the first instance will be paid or advanced by the said Secretary of State. And whereas it has been agreed that the of and the manager of the said estate should each deposit the sum of Rs. with the Commissioner of the Division and enter into a bond in the sum of Rs. as and by way of security for the repayment of all the expenses to be incurred by the said Secretary of State his successors in office or assigns in and about such survey and record-of-rights as aforesaid. And whereas the said has paid to and deposited with the Commissioner of the Division the sum of Rs. as such part security as aforesaid. Now the condition of the above-written bond is such that if the said his heirs executors administrators representatives or assigns do and shall pay to the said Secretary of State his successors in office and assigns the proportionate share payable in respect of the lands of the of of all the expenses incurred and to be incurred by the said Secretary of State his successors

in office and assigns in and about the carrying out of the abovementioned survey and record-of-rights and do and shall at all times hereafter save harmless and keep indemnified the said Secretary of State his successors in office and assigns of from and against all losses damages and expenses whatsoever in respect of the carrying out of the abovementioned survey and record-of-rights then the above-written bond shall be void and of no effect otherwise the same shall be and remain in full force and virtue.

The form of security-bond to be executed by the manager of a ward's estate is, *mutatis mutandis*, the same as the above, the words "successors in office and assigns" being substituted for "heirs, executors, administrator, representatives, and assigns."

Board of Revenue's instructions.—The Board of Revenue have directed that in estimating the cost of the operations, the pay of the Revenue-officer should be charged in accordance with the time for which he is actually engaged on the work, even if the expenditure exceeds the scale laid down in Rule 46, Chap. VI of the Government Rules under the Tenancy Act.

Accountant-General's instructions.—The Accountant-General of Bengal has said: "The simplest course will be for the money advanced by Government for a survey and record-of-rights under the Bengal Tenancy Act in regard to the Sunkerpore Estate in the Dinagepore District to be kept under advances recoverable outside of the Civil Estimates and unconnected with the service-payments for Land Revenue." (See A. G.'s No. $\frac{\text{T.A.}}{16}$ of the 18th April, 1887, to the Chief Secretary to the Government of Bengal.)

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

Particulars to be recorded.

(*a*) the name of each tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation, quantity and boundaries of the land held by him;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;

(*h*) the special conditions and incidents, if any, of the tenancy.

Where a measurement was made before the passing of this Act under sec. 9 Act VIII (B. C.) of 1879, an officer subsequently appointed under this chapter to prepare a record-of-rights is, according to the Board of Revenue, at liberty to make use of such survey and need not commence the survey *de novo* (Board of Revenue's letter 559A, dated December 2nd, 1886, to the Commissioner of Dacca) ; but any person who denies the accuracy of the measurement will be at liberty to dispute it under sec. 105 when the draft-record is published, and the Settlement officer will then be bound to hear and decide the dispute. An officer appointed to make a survey and record-of-rights under this chapter is not, therefore, according to the above ruling of the Board, bound to make a fresh measurement, if he finds a measurement done to his hand, and is satisfied of its accuracy.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

This is meant specially to provide for the case of a combination of the tenants against a new proprietor or tenure-holder, who is unable to obtain the papers of his predecessor. The provisions of this section may, however, be had recourse to by a proprietor or tenure-holder under any circumstances, subject to, and in accordance with, the rules prescribed by the Local Government, for the purpose of having a record of tenants' rights and settlement of rents made by a Revenue officer. The Local Government, it will be observed from the rules printed in Appendix I, Chap. VI, Rule 39, has prescribed that, if the application is made by a proprietor, it shall not be admitted unless his name has been registered under the Land Registration Act, and that Revenue-officers, in making surveys and records of-right under this section, shall follow the procedure prescribed for the guidance of officers making the more extensive surveys and records-of-right ordered by the Local Government with or without the sanction of the Governor-General under sec. 101, and detailed in Chap. VI of the rules made by the Local Government under this Act.

An application for a record-of-rights must be made by all the proprietors.—The Board of Revenue have ruled that, under sec. 188 of this Act, a application under sec. 103 is not admissible unless it is made by all the proprietors or by an agent authorized to act on behalf of all. (Board of Revenue's No. 71F of the 29th November, 1886, to the Commissioner of Burdwan.)

By whom cost should be paid.—The entire cost of a record-of-rights, when the application is made under this section, must be defrayed by the applicant, unless a special order under sec. 114 is passed for apportioning it. (Board of Revenue's No. 767A of the 18th December, 1886, to the Commissioner of the Burdwan Division.)

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

Procedure as to recording or settling rents.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

On application of landlord or tenant, Revenue-officer bound to settle rent for all the land.—It is to be noted that, under sub-sec. (2), when it appears that the tenant is holding land in excess of, or less than, that for which he is paying rent, or the landlord or tenant applies for a settlement of rent, the Revenue-officer is to settle the rent for *all* the land held by the tenant, and not merely for the excess land which it appears he is holding. Such an application must, under the provisions of sec. 188, in the case of joint-landlords, be made by all of them collectively, or by their common agent.

Revenue-officer bound to settle fair rents, in case of change in area of land.—When it appears that a tenant is holding land in excess of, or less than that for which he is paying rent, the Revenue-officer is bound to settle a fair rent, whether the parties apply for such settlement or not. The Act does not, however, define what is meant by "an area in excess of, or less than, that for which the tenant is paying rent." Revenue-officers, in determining what is an "excess area," should have regard to sec. 52, sub-sec. (2), which affords certain principles by which they will have to be guided in determining the area for which rent has been previously paid. See the note to sec. 52 (2), where this subject is discussed.

Board of Revenue's instructions as to assessment of excess areas in Wards' estates.—The Board of Revenue in its executive capacity has recently

instructed the manager of a wards' estate, under survey and settlement in accordance with the provisions of this Act, to refrain from seeking enhancement on the ground of excess area, unless the excess area resulting from measurement exceeds the area recorded in the zamindar's papers by twenty per cent. Settlement-officers proceeding judicially to settle fair rents under Chap. X, are not in any way bound by the executive orders of the Board ; but they are bound under the law, when an enhancement or abatement of rent is applied for on the ground of increase or decrease of area, to put the party claiming the alteration in rent to strict proof of the increase or decrease in area.

Value of Jamabandi papers as evidence.—Settlement-officers in conducting enquiries, as to alleged alterations in area, should be careful how they admit *jamabandi* papers as evidence of the amount of rent previously paid and of the area for which it was payable. Such *jamabandi* papers, if they are less than thirty years old, must be proved by the evidence of the person who prepared them, if he be forthcoming, or by the evidence of some one who knows his handwriting. Evidence should also be given of their correctness, and of their having been acted upon. If they are more than thirty years old, it must be proved that they come from proper custody. (*Dwarkanath Chakrabartti* v. *Tara Sundari Barmani*, 8 W. R., 517. See note on *jamabandies* at the commencement of Chap. XIII.)

Revenue-officer bound to settle fair rents when settlement of land revenue is being made.—Under sec. 101, sub-sec. (2), cl. (*d*) the Revenue-officer is bound to settle fair rents for all tenants, where a settlement of land revenue is being made in respect of any local area, whether the tenants have applied for such settlement or not, and whether it appears they are holding land in excess of, or less than, that for which they are paying rent, or it does not so appear ; so that it follows that where a settlement of land-revenue is being made in respect of any local area, the rents of all occupancy-raiyats must be fixed in that local area for fifteen years, and those of all non-occupancy-raiyats for five years.

In proceedings under this chapter all existing rents presumed to be fair.—Under sub-sec. (3) a Revenue-officer is bound to presume that the rents paid by non-occupancy and occupancy-raiyats alike are fair and equitable, till the contrary is proved. There is no corresponding provision binding or authorizing the Civil Courts, in suits for the enhancement of non-occupancy-raiyats' rents, to presume that the existing rent of a non-occupancy-raiyat is fair and equitable. The Civil Court, in such suits, is to have regard "to the rents generally paid by raiyats for lands of a similar description and with like advantages in the same village." (Sec. 46 (9).) It, therefore, appears that, while a non-occupancy-raiyat can only have a fair rent settled by the Civil Courts when he has refused to pay an enhanced rent (sec. 46, sub-secs. 6 and 8), he can have a fair rent settled, in proceedings under this chapter, on making an application on that behalf, though there be no demand for enhancement. The sections of the Act which lay down rules for the guidance of a Civil Court when increasing or reducing rent, are secs. 29 to 36, 38, and 52. The Act gives no precise rules for the assessment of fair rents for non-occupancy-raiyats, but the provisions of sec. 46 (9) should be observed in determining the fair and equitable rent for such raiyats, that is to say, regard should be had to the rents generally paid by raiyats for lands of a similar description and with like advantages in the same village.

105. (1) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

Publication of record.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Rules framed by the Local Government for the publication of the draft and of the final record under this section will be found in Appendix I. (See Chap. VI, Rules 33 and 34.)

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Procedure in case of dispute as to entries in record.

These sections (105 and 106) eliminate the danger of any one being prejudiced by entries made behind his back.

Procedure in deciding disputes.—The procedure to be followed in deciding disputes under this section is given in Rule 32, Chap. VI of the Rules, and is as follows:—

"In proceedings under sec. 106, when a dispute arises before the final publication of the record regarding the correctness of an entry (not being an entry of rents settled under Chap. X), or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue-officer, be affected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection, which may, in that case, be heard and decided as a suit *ex parte* under the Tenancy Act."

Procedure to be adopted by Revenue-officer.
XIV of 1882*

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure* for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

"Subject to rules made by the Local Government under this Act."—The procedure laid down in the Code of Civil Procedure has been modified by the Local Government by the rules contained in Chap. VI of the Rules under this Act (Appendix 1), which, among other modifications, authorize the Revenue-officer to allow any number of tenants occupying lands in the same village or estate to make a joint application for settlement of rents, or to be joined as defendants on a similar application by the landlord. Another similar modification is that mentioned in the note to sec. 106.

Appeals from decisions of Revenue-officers.
XIV of 1882.*

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure* relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure,* an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter :

Provided that if, in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

What decisions are, and what are not, appealable to Special Judge.—As the decisions of Settlement-officers are, under this section, appealable to a

Special Judge, a Special Judge, who may or may not be the District Judge, will have to be appointed in every district in which settlements of rent are being made by a Revenue-officer in Government or other estates. It is to be remembered, that it is only decisions in proceedings for the settlement of rents and in disputes as to the correctness of an entry or the propriety of an omission arising before the final publication of the record (sec. 106) which are appealable to the Special Judge. Such decisions have the force of decrees; but entries recorded by the Revenue-officer acting as such, and not as a Civil Court, such as entries in the *khasrah* regarding the facts of irrigation, crops grown, rates of rent, and the like, are not decisions. They do not form part of the "record" which is contained in the *khewat* and *khatians*. Entries which are not contained in the *khewat* or *khatians* are not, therefore, appealable to the Special Judge. Nor would an undisputed entry as to the amount of the existing rent, not being an entry of a fair rent settled by the Revenue-officer, though forming part of the "record," be a decision. If, however, at any time before final publication of the record a dispute were to arise regarding such latter entry, the Revenue-officer is bound to decide the dispute, following, with some modifications, the procedure laid down in the Code of Civil Procedure, and his decision will then be appealable to the Special Judge.

The Judges of Mozufferpore, 24-Parganas, Rajshahye, Dinagepore, Pubna and Bogra, Dacca, Furreedpore, Mymensingh, Tipperah, Bhaghulpore, Purneah, and Maldah have all been appointed Special Judges under the provisions of this section. (See notifications of the 2nd and 9th April, 1888, published in the *Calcutta Gazette* of the 4th and 11th April, 1888).

Court-fee duty on appeals.—The Court-fee duty on appeals from the orders of a Settlement-officer, or on second appeals from the orders of a Special Judge, would seem to be Rs. 10 under cl. vi, art. 17, Sch. II, Act VII of 1870. It is clear that art. 11, Sch. II of Act VII of 1870 will not apply; as the decisions of a Settlement-officer, in all proceedings for the settlement of rents under the Chapter and in disputes as to entries in the record under sec. 106, have the force of decrees. (Sec. 107.)

Undisputed entries in record to be presumptive evidence.

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

Disputed entries.—It is not quite clear what is meant in this section by "disputed entries." Does the expression mean entries the subject-matter of which has been the subject of dispute, or entries which are still, at the time of completing the record, the subject of dispute? The latter would, at first sight, appear to be the meaning, but it cannot be so in reality; for, under sec. 106, the Revenue-officer is bound to hear and decide any dispute regarding any entry arising before the final publication of the record, and his decision has the force of a decree; so that, *ex hypothesi*, there would be no disputed entries left when the record is being finally published. It appears, therefore, that what is meant is entries which have been the subject of dispute during the previous proceedings. It is provided, accordingly, in Chap. VI of the Rules, that the entries which have and have not been the subject of dispute be enumerated in columns 18 and 19 of

the *khatians*. When an entry is disputed before the final publication of the record, the Settlement-officer is bound to hear and decide the dispute. His decision has the effect of a decree, and is appealable to the Special Judge; but if an entry is not disputed before the final publication of the record, it is merely presumed to be correct, and any party subsequently questioning its correctness, must prove that it is incorrect.

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

This does not oust the jurisdiction of the Civil Courts in cases other than suits or applications for the alteration of the rent or determination of the tenant's status; so that suits for the recovery of arrears of rent, for example, will still continue to be tried in the ordinary Civil Courts, notwithstanding that a record-of-rights is being made in the local area within which the cause of action arose.

Power to authorize a special settlement in special cases.

112. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

The provisions of this section are intended to take the place of Sir R. Temple's Agrarian Outrage Act (VI of 1876, B.C.), which was to have effect for three years only, and has consequently expired. "It seems desirable," Sir Steuart Bayley observed, "that, in exceptional cases, in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the dispute, and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period. It is an extreme power, and I trust it will be resorted to as little as Sir Richard Temple's Agrarian Outrage Act was."

Period for which rents, as settled, are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112, or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

It would appear from the wording of this section, read with sec. 104, that a Revenue-officer is bound, on the application of a tenure-holder, to settle a fair rent for a tenure, and that the rent so settled cannot be enhanced for fifteen years. Under sec. 9, the rent of a tenure cannot be enhanced by a Civil Court during the fifteen years next following the date of its enhancement by a Civil Court or by contract. These restrictions are meant to apply only to tenures of a more or less raiyati character, such as the *jotes* of Rungpore. An indigo-planter, who may be *thikadar* of a whole estate or village, or of a number of villages, is a tenure-holder as defined in sec. 5 (1); but it is not intended that Revenue-officers should settle the amount of rent equitably payable by tenure-holders of that class, or that their rents should not be liable to enhancement by contract more often than once in fifteen years. It cannot have been intended that *ijaradars*, *thikadars*, and other tenure-holders of that class should not be allowed perfect freedom of contract to pay any rent or enhancement of rent they please, and as often as they please; for sec. 7 (1) specially enacts that the enhancement of rents of these tenures is subject to contract.

Expenses of proceedings under this chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-sec. (2), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

The apportionment of the cost of a survey and settlement applied for under sec. 101 (2), cls. (*a*) and (*c*) depends on various considerations, such as—which party is benefited by the survey, and which is to blame for the condition of things which made the survey necessary. It is to be observed that this section lays down that the amount payable by each person shall be recoverable *from him* as if it were an arrear of revenue. The raiyats' quota would, therefore, seem not to be recoverable through the landlord on the principle of cesses under the Cess Act, but must be recovered as a public demand under the Certificate Procedure. The meaning of the words "having regard to the circumstances of each case" is not very clear. It would be an obvious absurdity to suppose that the Local Government is to have regard to the circumstances of each individual raiyat's case. No doubt what is meant is, that regard should be had to the circumstance of the case of each local area for which a separate order under sec. 101 has been made.

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

The presumption referred to is that under which, when a tenure-holder or raiyat proves that his rent or rate of rent has not been changed for the twenty years immediately before the institution of the suit, it is presumed, until the contrary is shown, that he has held at that rent or rate of rent from the time of the Permanent Settlement.

Summary of processes of survey and record-of-rights.—The several processes of a cadastral survey and record-of-rights under this chapter may be briefly described thus:—

1*st.* A survey is to be made of the lands, showing the area of every field or plot of land separately assessed to rent.

2*nd.* The area of every tenant's holding, as shown by survey, is to be explained to him and to his landlord, and the amount of the tenant's present rent is to be ascertained and recorded.

3rd. Fair rents are to be settled on the application of either landlord or tenant, or without such application, if it appear that the tenant is holding land in excess of, or less than, that for which he is paying rent, or if a settlement of land revenue is being made in respect of the local area.

4th. The status of every tenant, viz., whether he be a tenure-holder, under-tenure-holder, raiyat at fixed rates, a settled, occupancy, non-occupancy or under raiyat, is to be ascertained and recorded.

5th. The character and extent of the interest of every proprietor and proprietary mortgagee is to be ascertained and recorded. This part of the record will be a copy of the Collector's Land Revenue Register corrected up to date.

6th. The "private lands" of proprietors are to be defined and recorded.

The record-of-rights will be contained in—

1st. The *khewat*, which contains the record of the character and extent of the interests of proprietors and proprietary mortgagees.

2nd. The *khatians*, which will contain a record of the rights and interests of tenure holders and under-tenure-holders, and of the particulars of the holding of every raiyat and under-raiyat.

The record, when framed, will have to be published for one month. All disputes arising during this month regarding any entry in it will have to be decided by the Revenue-officer, whose decision on such disputes will have the force of a decree. His decisions in proceedings for the settlement of fair rents on the application of the parties, or without such application in the cases specified in sec. 104 (2), will also have the force of a decree; so that, as the Revenue-officer's decision on disputes and in proceedings for settlement of fair rents has the force of a decree, the only entries in the record which have not the force of a decree are undisputed entries, which do not relate to proceedings for settlement of fair rents, and these are presumed to be correct till the contrary is proved. An example of this latter class of entries would be an entry of the existing rent as the rent payable, where the amount is undisputed, and a fair rent has not been settled by the Revenue-officer either on the application of one of the parties or of his own motion. It is to be observed that the *khasrahs*, village-reports, and other papers, which it may be necessary to draw up for the purpose of preparing the *khewat* and *khatians*, not themselves forming part of the *khewat* or *khatians*, are are not part of the record. Such papers need not be published, nor are the rights of parties affected by any entries made in them.

Result of survey and record-of-rights in Mozufferpore.—The results of the experimental survey and record-of-rights in Mozufferpore are thus described by the Board of Revenue in their Annual Land Revenue Administration Report for 1885-86 (para. 246, p. 44):—

"The success of the work, so far as it has gone, may fairly be judged by the absence of that friction and those difficulties which were expected in connection with it. There has been no opposition and no obstacles of any kind. On this subject the Board are glad to reproduce the opinion of the Commissioner, Mr. Halliday, as follows:—

"'The survey operations under the Bengal Tenancy Act are progressing as smoothly as possible; disputes as to boundaries and possession are few, and are chiefly connected with pieces of waste-land and roads; organised opposition there is none; and it is now clear that apprehensions as to the relations between landlords and tenants being embittered by the survey are groundless. Among the zamindars, the survey seems, on the whole not unpopular, inasmuch as they see that it

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will provide facilities for identifying the whole of their lands and for realising their dues on account of every portion of their estates. The ryats are quite indifferent in the matter, and see no cause for resistance or opposition to the proceedings. The criminal cases connected with the demarcation and survey proceedings have been extremely few, and have mostly, on investigation, turned out to be false or exaggerated. Nothing in the shape of a riot has been proved in any instance. The survey will effect much good in the way of determining rights and facilitating the identification of land. It is probable that the survey record will be looked upon as a charter of rights by all classes interested in land, and no transfer will be negociated without reference to it.'"

The survey and settlement operations were terminated in accordance with the orders of the Secretary of State for India in July, 1886; but it is understood that the question of resuming them is under consideration.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír, or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Saving as to *khámár* land.
Sec. 6, Act X, 1859; sec. 6, Act VIII, B.C., 1869.

Classes of land, and proprietors' rights in them—Proprietors' estates may be regarded as made up of two sorts of lands—*khámár* or demesne (here called proprietors' private lands) and *raiyati* or communal land. Waste-land may be either *khámár* or *raiyati*, but ordinarily it is *raiyati*; for all land is presumed to be *raiyati* until the contrary is proved. (Sec. 120 (2) and (3).) *Khámár* land comprises all the land which, according to the ancient custom of the country, or according to any local practice, has been recognized as private land, *plus* all the land which, before the commencement of this Act, proprietors have given evidence of a wish to permanently cultivate themselves. They cannot, as explained by Mr. Ilbert in introducing the Tenancy Bill into Council, add to the existing stock of *khámár* land after the passing of this Act, and, consequently, in the future, all the rest of their estates will be either communal or *raiyati* land. But the Act rather adds to the extent of land which is lawfully proprietors' demesne land than diminishes it; for, at the time of the Permanent Settlement, no land was recognized as *khámár* which was not such on the 12th August, 1765 (see secs. 37 to 39, Reg. VIII of 1793), and there is no law recognizing the creation of *khámár* land subsequently to that date.

Proprietors may bar the accrual of the occupancy status in their *khámár* or private land by letting it under a lease for a term of years, or under a lease from year to year. In reference to it, they are given the fullest freedom of contract. Under the old law, if they did not bar the accrual of these rights in such land, these rights arose (*Gaur Hari Singh* v. *Behari Raut*, 3 B. L. R., App., 138; 12

W. R., 278 ; *Bhagwan Bhagat* v. *Jag Mohan Rai*, 20 W. R., 308 ; *Ashraf* v. *Ram Kishor Ghosh*, 23 W. R., 288), and the law in this respect is apparently unchanged. In the *raiyati* land, however, they may not bar the growth of tenant-right, unless in accordance with the provisions of this Act. As to *raiyati* land which may have lapsed, proprietors are allowed to cultivate it if they wish ; but if they let it to tenants, they must allow such rights to accrue to them as this Act guarantees. The right to hold *nij-jot* lands passes with the sale to the auction-purchaser, and the ex-zamindar cannot claim any right of occupancy in these lands ; his holding, after the sale, is in the capacity of an ordinary raiyat, and must be dealt with accordingly. (*Jaidat Jha* v. *Bayi Ram Singh*, 7 W. R., 40 ; *Reed* v. *Krishna Singh*, 15 W. R., 430.) The raiyats of proprietors' private lands would seem to be non-occupancy-raiyats, and the provisions of Chapter VI to be applicable to them.

Lands held by indigo-planters in Behar.—This section, it is to be observed (see sec. 120), refers only to lands cultivated by the proprietor himself, and not to the class of lands in Behar originally occupied by raiyats, but now cultivated by indigo-planters. Such lands would be *khâmâr* or *sir* proper, if recognized by village-custom as proprietor's private lands, or if cultivated by the proprietor himself for twelve years before the passing of this Act ; but the mere cultivation of them by a *thikadar* for twelve years before the passing of this Act would not make them *khâmâr*. A *thikadar* cannot, during the currency of his lease, under any circumstances, acquire occupancy-rights in any land comprised within his *ijara* or lease (sec. 22, cl. 3), whether the land be *zirât* or not ; but if he had acquired a right of occupancy in any such land before taking the *thika*, he does not lose it by taking the lease (see explanation to sec. 22).

Power for Government to order survey and record of proprietors' private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

The object of this section is to prevent disputes in future as to what is, and what is not, proprietor's private land.

Two alternative methods of procedure are provided for the determination of of private lands :—

(1) that of survey and registration of such land by a Revenue-officer by order of the Local Government under this section ;

(2) that of enquiry on the application of the landlord or tenant under the next section.

The former procedure will apply to large areas, where the question is important ; and the latter, to disputes about particular plots of land. The provisions of this chapter, while making it incumbent on the Revenue-officer to record certain land as the proprietor's private land, assist him by certain guiding rules (sec. 120), in cases not clearly coming under the description of lands which he is bound to record as *khâmâr*.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Under sec. 107, the Local Government may make an order, directing a Revenue-officer, when proceeding under Chap. X of this Act, to make a record of *khámár* lands; but, supposing that no Settlement-officer should come on the ground and make such a record for twenty years, it may be difficult for the proprietor to prove that he has cultivated the land for twelve years before the passing of this Act. This section meets this difficulty; for it allows a landlord to go before a Revenue-officer at once, and ask him to record what land he holds as private land, and thus to prevent the possibility of there being any uncertainty on this point at any future date.

The rules framed by the Local Government under this section will be found in Appendix I. (See Chap. IV of the Government Rules under the Tenancy Act.)

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Under this section, the provisions of secs. 105 to 109 and the rules framed under them relating to the publication of the record, the procedure in cases of dispute as to entries in the draft-record, the application of the Code of Civil Procedure to the Revenue-officer's proceedings, the procedure in the case of appeals from his decisions, and the presumptive value of evidence of undisputed entries in the record, are made applicable to the Revenue-officer's record of private lands. It, therefore, follows that appeals from his decisions in such cases must lie to a Special Judge.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot, or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village-usage as proprietor's khámár, zirát, sír, nij, nij-jot, or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced ; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

It is to be noted that it is land proved to have been cultivated by the proprietor himself, which is *khámár*. Cultivation by a *thikádar* or *ijárádar*, who is a tenure-holder, and not a proprietor, will not, therefore, of itself, show that the land is *khámár*, though it may be so on other grounds,—namely, if so recognized by village-usage, or perhaps if specifically let as such, before the 2nd March, 1883. (Sub-sec. (2).)

It is not clear what the framers of the Act meant by "cultivated land recognized by village-usage as *khámár*," but it is believed that reference is made to certain parcels of land known in parts of Behar as *kamats*, which, though they may have been cultivated by tenants in the ordinary way for more than twelve years, are still recognized as the landlord's *khámár*. These are, however, of very limited extent.

March 2nd, 1883, is, as already remarked, the date of the introduction of the draft Bill into the Governor-General's Council, from which date it was proposed by the Bengal Rent Commission that the Tenancy Act, drafted by them, should have effect.

CHAPTER XII.

DISTRAINT.

Operation of this chapter postponed to 1st February, 1886.—Section 124 of this chapter provides for the making of rules by the High Court for the publication of the notification of the distraint. As, however, draft rules under this section could not be framed till the Act itself came into force, and under sec. 190, sub-sec. (3) the draft rules had then to be published for a month at least before they had the force of law, it followed that, for at least the first month after this Act came into force, there could be no lawful rules under this section for working its provisions. In order to meet this difficulty, a Supplemental Act (XX of 1885) was passed, providing, *inter alia*, that the provisions of this chapter, except such of them as confer powers to make rules, shall come into force on such date, not later than the first day of February, 1886, as the Local Government, after the passing of this Act may, by notification in the local official Gazette, appoint in this behalf, or, if no date is so appointed, on the first day of February, 1886, and not before ; and that, until those provisions come into force, the enactments specified in Sched. I, annexed to this Act, shall, in so far as they relate to distraint, continue in force, and all references to those provisions in other portions of this

CHAP. XII. SEC. 121. Act shall, so far as may be, be read as if they were made to the corresponding provisions of the said enactments.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

Cases in which an application for distraint may be made.

Secs. 112 and 113, Act X, 1859; secs. 68, 69 and 71, Act VIII, B. C., 1869.

(*a*) any crops or other products of the earth standing or ungathered on the holding ;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act ; or

VII (B. C.) of 1876.

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed ; or

(3) in respect of the produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

History of law of distraint.—The law of distraint is an offset of English law. It was originally introduced into this country by Regs. XVII of 1793 and XLV of 1795. Certain specified landlords were empowered "to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all

other personal property (whether found on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law till 1859, when the power of distraint was limited to the produce of the land on account of which the rent was due." (Rent Law Commissioners' Report, p. 2.) It was at first proposed, when this Act was under consideration, to withdraw the power of distraint altogether from landlords. This proposal was, however, negatived, but the powers of distraint given by the old law have been very considerably modified in this Act. A landlord can no longer distrain except through the Courts, unless authorized to do so by the Local Government (see sec. 141). Ordinarily, distraint will be carried out by the zamindar's servants only under the supervision of the Court, and the assistance of the Court is to be obtained "on application," which may, under sec. 187, be made by an agent empowered in this behalf by a written authority under the hand of the landlord as well as by the landlord himself.

Rent.—The word rent in secs. 73 to 75 includes also money recoverable under any enactment for the time being in force as if it were rent (see sec. 3 (5)).

What and whose crops may be distrained.—It has been held that the provisions of Act X of 1859 refer only such produce of the land as becomes ripe, and is cut, gathered, and stored. (*Sheo Prasad Tewari* v. *Molima Bibi*, 1 All., pt. iii, 7.) Trees, shrubs, and plants, growing in a nursery ground, cannot be distrained for rent (Selwyn's N. P., 669.) A landlord cannot distrain crops for arrears due, not from the tenant, but from another person not in possession, and who did not cultivate the crops. (*Mohini Dasi* v. *Ramkumar Karmokar*, W. R., Sp. No., 1864, Act X, 77.)

Distraint by co-sharers.—Section 112, Act X of 1859, and sec. 68, Act VIII (B. C.) of 1869, provided that no co-sharers in an estate or tenure should exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate or tenure, and the provisions of sec. 188 of this Act similarly restrict the exercise of the power of distraint under this Act. No single co-sharer in an estate, tenure, or holding can now exercise the power of distraint any more than he could under the former law. The power of distraint could, under the old law, be exercised even in cases in which the tenant had sublet the land, the crops of the sub-tenant being subject to distraint for rent due from the tenant. (*Gitam Singh* v. *Baldeo Kahar*, 4 All., 76.) But, under the provisions of proviso (3) to this section, it is evident that it is only in cases in which the tenant has sublet the land without the written consent of the landlord that the crops of the under-raiyat are liable to be distrained by the landlord for arrears of rent due from the raiyat.

Form of application.

122. (1) Every application under the last foregoing section shall specify—

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;

(*b*) the name of the tenant ;

(*c*) the period in respect of which the arrear is claimed ;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent

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payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;

(*e*) the nature and approximate value of the produce to be distrained ;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

Act XIV of 1882.

Application how to be signed and verified.—Section 51, Act XIV of 1882 provides, that "the plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf." Section 52 provides, that "the verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters as he believes it to be true. The verification shall be signed by the person making it."

By whom to be presented.—Under the old law, "naibs, gomastahs, and other agents engaged in the collection of rent" could distrain "if expressly authorized to do so by power-of-attorney in that behalf." Now, an application to distrain can, under sec. 187, be presented to the Court by an agent of the landlord, if empowered in this behalf by a written authority under the hand of the landlord, unless the Court otherwise directs.

Court-fee stamp on application.—A distraint proceeding is a case, for evidence may be recorded in it. (Sec. 123.) An application for distraint would, therefore, seem to be one "relating to a case." If this be so, then, an application for distraint, if presented to a Civil Court other than a principal Civil Court of original jurisdiction, will be subject to a Court-fee duty of one anna or eight annas, according as the value of the crop to be distrained is less than, or amounts to, or exceeds Rs. 50. (Act VII of 1870, Sched. I, art. 1, cl. (*a*), para. 4.) Every application for distraint presented to a principal Civil Court of original jurisdiction is subject to a Court-fee duty of eight annas. (Sched. II, art. 1, cl. (*b*), para. 2.)

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

Procedure on receipt of application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the

application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Execution of order for distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

Service of demand and account.

Sec. 116, Act X, 1859; sec. 72, Act VIII, B. C., 1869.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Right to reap, &c., produce.
Sec. 118, Act X, 1859; sec. 74, Act VIII, B. C., 1869.

126 (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Sale proclamation to be issued unless demand is satisfied.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale. Sec. 129, Act X, 1859; sec. 86, Act VIII, B. C., 1869.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale. Sec. 129, Act X, 1859; sec. 86, Act VIII, B. C., 1869.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale. Sec. 130, Act X, 1859; sec. 87, Act VIII, B. C., 1869.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Payment of purchase-money. Sec. 131, Act X, 1859; sec. 88, Act VIII, B. C., 1869.

Certificate to be given to purchaser.
Sec. 131, Act X, 1859; sec. 88, Act VIII, B. C., 1869.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied.
Sec. 132, Act X, 1859; sec. 89, Act VIII, B. C, 1869.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

The rules made, and scale of charges prescribed, by the Local Government under sub-sec. (1) will be found in Appendix I (see Rule 6, Chap. VII of Government Rules under this Act).

Certain persons may not purchase.
Sec 133, Act X, 1859; sec. 90, Act VIII, B. C., 1869.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

All persons violating the provisions of this section are punishable under sec 185 of the Indian Penal Code.

Procedure where demand is paid before the sale.
Sec. 121, Act X, 1859, sec 77, Act VIII, B C., 1869.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's subletting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

Conflict between rights of superior and inferior landlords.

138. When land is sublet, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Under proviso 2 to sec. 121, a landlord is prohibited from distraining the produce of any part of a holding which has been sublet with his written consent. It follows that there can only be such conflict as is contemplated by this section when the land has been sublet without the written consent of the landlord.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

Secs. 139 and 141, Act X, 1859; secs. 96 and 97, Act VIII, B.C., 1869.

It is to be observed that the ground on which a suit for compensation may be brought is very limited. It is only in cases in which an application under sec. 121 has been allowed, and the distraint has accordingly taken place, and when subsequently it is shown that the application should not have been allowed, that the suit for compensation will lie. In other words, a suit for damages under this section will only lie where the distraint has been initiated in a Court; but under the provisions of sec. 186, if 'any person distrains, or attempts to distrain, without making such application,' or resists a distraint duly made, or forcibly or clandestinely removes any property duly distrained, or, except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with the produce of a holding, he will be deemed to have committed criminal trespass within the meaning of the Penal Code, and will, moreover, be liable to an ordinary civil suit for damages. Section 186 makes a great change in the law on this subject. The section was thought necessary in order to put a stop to abuses of the old distraint law, which were said to prevail especially in Behar.

Before a tenant can obtain a decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained. (*Ujan Dewan* v. *Prannath Mandal*, 8 W. R., 220.) Such a suit cannot be brought in a Small Cause

Court (*Haidar Ali* v. *Jafar Ali*, I. L. R., 1 Calc., 183); but in a recent unreported case (*Madhu Sudan Das* v. *Annada Prasad De*), in which the plaintiff sued for damages in consequence of the defendants having wrongfully distrained and sold the produce of six bighas of land, belonging to, and cultivated by, the plaintiff, the High Court (Petheram, C. J., and Beverley, J.) passed the following judgment:—"This rule was obtained to set aside the judgment of the Small Cause Court of Serampore on the ground that the Small Cause Court had no jurisdiction to try the suit. That is the only point which could be taken. The question which arises upon that is what the nature of the suit is. It is an action brought by a tenant against his landlord, joining several other persons as *pro formâ* defendants, but, as a matter of fact, the judgment is against the landlord only to recover damages from him, because the crops of his tenant have been distrained and sold in satisfaction of the rent due by his landlord to the superior landlord of the same property and which he had left unpaid. The first question which is sought to be argued is whether such a suit will lie, and if it will, whether it is a suit on contract. I am clearly of opinion that the suit will lie, and that it is a suit on contract. When a person is in possession of land which he holds as a tenant to another, and for which he is liable to pay rent if he under-lets that land to a tenant, the law will imply a contract that he will pay his own rent and not leave the tenant's goods to be distrained to satisfy the rent which he ought to pay; if he does not do that and the tenant's goods are seized and sold, he commits a breach of his contract to pay up his own rent, and therefore the tenant is entitled to sue him upon that contract and to recover damages. That is what has happened in this case, and therefore it seems to me that the case comes within sec. 6 of Act XI of 1865, which provides that all suits for damages shall be cognizable by the Small Cause Court. It is contended that they must be damages for breach of contract, but even upon that contention this is a suit for damages for breach of contract, and therefore comes not only within the provisions of the Small Cause Court Act, but within the admitted provisions of that Act. Under these circumstances, we think that the Small Cause Court had jurisdiction to try the case, and that this rule must be discharged." A landlord is not liable for the acts of his gomastah, who has illegally distrained crops without being authorized to do so, unless he subsequently ratifies them. (*Ramjai Mandal* v. *Kali Mohan Rai*, Marsh., 282; *Shama Sundari Debi* v. *Mallyat Mandal*, 11 W. R., 101.)

Power for Local Government to authorize distraint in certain cases.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by

section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

The Local Government has made no order under this section. The section is intended to meet a difficulty, which it was supposed may arise in particular tracts, where from the nomadic habits of the raiyats, or from the facility with which they may slip across the frontier, and remove the produce to border native states, it may be impracticable for the landlord to obtain an order of the Court in time to prevent the removal of the crop.

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

The Rules made by the High Court under the provisions of this section will be found in Appendix III.

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits. XIV of 1882.*

143. (1) The High Court may, from time to time, with the approval of the Governor-General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure* shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure* shall apply to all such suits.

The High Court has not as yet made any rules under this section. But, under the provisions of sec. 148, very considerable portions of the Code of Civil Procedure do not apply to suits under this Act for the recovery of rent.

The following rulings relating to procedure in rent-suits will be found useful :—

Burden of proof.—In cases in which a plaintiff sues for rent, and the defendant sets up the plea that the land is *lakhiraj* or rent-free, the onus is in the first instance on the landlord to prove *primâ facie* that the land is rent-paying. If there are circumstances which show that the land is rent-paying, *e. g.*, if the land lies within the ambit of the plaintiff's zamindari, then the onus is on the defendant to show that the land is rent-free. (*Moti Lal Aduk* v. *Jadupati Das*, 2 W. R., Act X, 44 ; *Satto Charan Ghosal* v. *Mohesh Chandra Mitra*, 3 W. R., 178 ; *Gangadhar Singh* v. *Bimola Dasi*, 5 W. R., Act X, 37 ; *Ashrafunnissa* v. *Umang Mohan Deb Rai*, 5 W. R., Act X, 48 ; *Mritanjai Chakrabartti* v. *Barada Kanta Rai*, 6 W. R., Act X, 18 ; *Jageshari Debi* v. *Gadadhar Banarji*, 6 W. R., Act X, 21 ; *Shib Narain Rai* v. *Chidam Das*, 6 W. R., Act X, 45 ; *Dhanmani Debi* v. *Satturghan Sil*, 6 W. R., Act X, 100 ; *Nihal Chandra Mistri* v. *Hari Prasad Mandal*, 8 W. R., 183 ; *Hira Ram Bharttacharji* v. *Ashraf Ali*, 9 W. R., 103 ; *Raj Kishor Mukharji* v. *Harihar Mukharji*, 10 W. R., 117 ; *Ambika Charn Mandal* v. *Ram Dhan*, 11 W. R., 35 ; *Man Mohan De* v. *Sri Ram Rai*, 14 W. R., 285 ; *Sridhar Nandi* v. *Braja Nath Kundu*, 14 W. R., 286 ; 2 B. L. R., 211 ; *Harihar Mukharji* v. *Madhab Chandra*, 8 B. L. R., 566 ; 14 Moore I. A., 152 ; *Arfannissa* v. *Piari Mohan Mukharji*, I. L. R., 1 Calc., 378 ; *Newaj Bandopadhya* v. *Kali Prasanna Ghosh*, I. L. R., 6 Calc., 543 ; *Akbar Ali* v. *Bhyea Lal Jha*, I. L. R., 6 Calc., 666 ; *Kailash Basini Dasi* v. *Gokulmani Dasi*, I. L. R., 8 Calc., 230 ; *Becharam Mandal* v. *Piari Mohan Banarji*, I. L. R., 9 Calc., 813 ; *Narendro Narain Rai* v. *Bishnu Chandra Das*, I. L. R., 12 Calc., 182.) In a suit for enhancement, where the defendant replies that the land in question does not belong to the plaintiff's estate, the onus is on the plaintiff (who seeks to dispute the previously existing arrangement) to prove his right to do so. (*Mahomed Ali* v. *Radha Raman Mandal*, 4 W. R., Act X, 18.) In a suit for enhancement of rent in respect of land, which the defendant claimed to hold as a dependent *taluk*, it was held that the onus was upon the zamindar to show that the land was included in the zamindari at the time of the Permanent Settlement. (*Ahsanullah* v. *Bassarat Ali Chaudhuri*, I. L. R., 10 Calc., 920.) In a suit to recover arrears of rent from the defendants, who, as *thikadars* of the plaintiff's share in a certain mauzah, had been in possession from 1262 to 1281 without having paid any rent, the plaintiff, who claimed a *bhaoli* rent at the rate of 9 annas of the crop, proved that in the mauzah in question the raiyats paid rent at that rate, and it was held that under the particular circumstances the onus was on the defendants, who alleged that the proper rate was 8 annas, to prove their allegation. (*Lochan Chaudhri* v. *Anup Singh*, 8 C. L. R., 426.) In a suit to recover arrears of rent at enhanced rates, the onus of proving both the quantity and the rates is upon the plaintiff and not upon the defendant. (*Ghulam Ali* v. *Gopal Lal Tagore*, 1 W. R., 56 ; 9 W. R., 65.) The onus of proving the proper rate is upon the plaintiff, and not upon the defendant. (*Samira Khatun* v. *Gopal Lal Tagore*, 1 W. R., 58.) With the above rulings should be read sec. 109, Act I of 1872, which provides that when the question is whether persons are landlord and tenant or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they have ceased to stand to each other in those relations respectively is on the person who affirms it. See also *Rango Lal Mandal* v. *Abdul Ghaffur*, I. L. R., 4 Calc., 314 ; *Parbati Dasi* v. *Ramchand Bhattacharji*, 3 C. L. R., 576.

Jamabandies, Chittas, Collection papers and Road Cess Returns.—*Jamabandi* papers can never be treated as independent evidence of any contested

fact. (*Chamarni Bibi* v. *Ainullah Sirdar*, 9 W. R., 451.) *Jamabandi* papers can only be used as corroborative evidence of the same value as books of account. (*Gajju Koer* v. *Ali Ahmad*, 14 W. R., 474; 6 B. L. R., App, 62.) The *jamabandi* papers of a former *patwari* are valueless without the personal testimony of the *patwari*. (*Bhagwan Datta Jha* v. *Sheo Mangal Singh*, 22 W. R., 256.) The evidence of a *patwari* corroborated by *jamabandi* papers may be conclusive. (*Dhanukdhari Sahi* v. *Toomey*, 20 W. R., 142.) *Jamabandi* papers filed by a proprietor in *batwara* proceedings to which the tenant is not necessarily a party cannot be used as evidence against such tenant in a suit for arrears of rent. (*Kishor Das* v. *Parsan Mahtun*, 20 W. R., 171.) A suit for enhanced rent cannot be based on a *jamabandi* to the terms of which the tenant has not consented. (*Inayatullah Miah* v. *Nobo Kumar Sirkar*, 20 W. R., 207.) A *jamabandi* drawn up under sec. 9, Reg. VII of 1822, specifying the amounts of rent payable by the tenants, who were *aimadars*, and voluntarily signed by them is evidence against them. (*Watson* v. *Mohendra Nath Pal*, 23 W. R., 436.) A *jamabandi* prepared by a Deputy Collector, while engaged in the settlement of land under Reg. VII of 1822, is a public document within the meaning of sec. 74 of the Evidence Act. It is not necessary to show that at the time when such document was prepared, a raiyat affected by its provisions was a consenting party to the terms specified. (*Taru Patar* v. *Abinash Chandra Datta*, I. L. R., 4 Calc., 79.) *Chittas* not duly proved are not legal evidence, though admitted by the lower Court without objection from the opposite party. (*Izzatullah Khan* v. *Ram Charn Ganguli*, 12 W. R., 39.) When *chittas* were produced by the plaintiff as evidence of certain lands being rent-paying, it was held that they were sufficiently attested by the deposition of the village gomastah that they were the *chittas* of the village when he was gomastah, and that he had been present when, with their assistance, the measurement of the lands of the village had been tested. (*Debi Prasad Chattarji* v. *Ram Kumar Ghosal*, 10 W. R., 443.) *Chittas* and maps made in contemplation of resumption-proceedings in the presence of both parties and signed by the parties are legal evidence. (*Sham Chand Ghosh* v. *Ramkrishna Behra*, 19 W. R., 309.) *Chittas* produced from the Collectorate, when there is nothing to show that they are the record of measurements made by any Government officer, are not public documents. (*Nityanand Rai* v. *Abdur Rahim*, I. L. R., 7 Calc., 76.) *Chittas* made by Government for its own use are nothing more than documents prepared for the information of the Collector, and are not evidence for the purpose of proving that the lands are or are not of a particular character or tenure. (*Ram Chandra Sahu* v. *Bansidhar Naik*, I. L. R., 9 Calc., 741; *Dwarka Nath Misra* v. *Turita Mayi Debi*, I. L. R., 14 Calc., 120. See also *Janmajai Mallik* v. *Dwarkanath Mahanti*, I. L. R., 5 Calc., 287; and *contrà*, *Taraknath Mukharji* v. *Mohendra Nath Ghosh*, 13 W. R., 56; *Mochiram Manjhi* v. *Bissambhar Rai*, 24 W. R., 410.) *Jama-wasil-bakies* or collection papers are not evidence by themselves. The mere production of such papers is not enough. But coupled with other evidence, they often afford a very useful guide to the truth. (*Roshan Bibi* v. *Hari Krishna Nath*, I. L. R., 8 Calc., 926.) *Jama-wasil-bakies* are not independent evidence of the amount of rent mentioned therein, but it is perfectly right that a person who has prepared such *jama-wasil-baki* papers of the rent should refresh his memory from such papers when giving evidence as to the amount of rent payable. (*Akhil Chandra Chaudhri* v. *Nayu*, I. L. R., 10 Calc., 248; *Mahomed Mahmud* v. *Safar Ali*, I. L. R., 11 Calc., 407. See also *Allyat Chinaman* v. *Jagat Chandra Rai*, 5 W. R., 242; *Khiro Mani Dasi* v. *Bijai Gobind Baral*, 7 W. R., 533; *Sheo Sahai Rai* v. *Gudar Rai*, 8 W. R., 328; *Ram Lal Chakrabartti* v. *Tara Sundari Barmanya*, 8 W. R., 280;

Newazi v. *Lloyd*, 8 W. R., 464 ; *Bijai Gobind Baral* v. *Bhiku Rai*, 10 W. R., 291 ; *Mohima Chandra Chakrabarrti* v. *Purno Chandra Banarji*, 11 W. R., 165.) Road cess papers are not admissible against a tenant either as substantive or corroborative evidence of the amount of rent payable by him. (*Mahomed Mahmud* v. *Safar Ali*, I. L. R., 11 Calc., 407. See. also *Daitari Mahanti* v. *Jagatbandhu Mahanti*, 23 W R., 293.)

Intervenors.—Under sec. 77, Act X of 1859, intervenors claiming to have been in receipt of rent from the defendant up to the time of the commencement of the suit, were entitled to be made parties, and if found to have been actually and in good faith in receipt of the rent were entitled to a decree irrespective of their legal title to the property. (*Nawab Nazim* v. *Padma Lochan Mandal*, 5 W. R., Act X, 26 ; *Jishan Hossain* v. *Narain Das*, 5 W. R., Act X, 56 ; *Krishna Kumar Shaha* v. *Jiban Singh*, 5 W. R., Act X, 85 ; *Haronath Rai* v. *Prannath Rai*, 7 W. R., 85 ; *Umesh Chandra Datta* v. *Bhagaban Chandra Rai*, 9 W. R., 305 ; *Jagurdi* v. *Radha Kishor Talukdar*, 13 W. R., 259.) They could not, however, be made co-plaintiffs against their will. (*Behari Lal Das* v. *Radha Nath Das*, 22 W. R., 229.) But the provisions of sec. 77, Act X of 1859, were not reproduced in Act VIII of 1869, B. C. It was, therefore, held that it was not necessary to admit an intervenor in a rent-suit under Act VIII of 1869, B. C., if his interest could not be injured by a decree therein (*Ishar Chandra Sen* v. *Bipin Bihari Rai*, 16 W. R., 132 ; *Chuli Lal* v. *Kokil Singh*, 19 W. R., 248) ; and although he could be made a party under sec. 73, Act VIII of 1859, a Court was bound to limit its enquiry to the issues, which alone were necessary for the trial of the plaintiff's right to the relief sought. (*Doyal Chandra Sahai* v. *Nabin Chandra Adhikari*, 16 W. R., 235 , 8 B. L. R., 180 ; *Guru Prasanna Banarji* v. *Gagan Chandra Datta*, 20 W. R., 383.) A rent-suit must be a *bonâ fide* suit for rent, and not a trial of a wholly different issue between parties advancing conflicting claims of ownership to the estate. (*Radha Malakar* v. *Srishti Narain Saha*, 21 W. R., 88 ; *Baikanta Kaibarta* v. *Shoshi Mohan Pal*, 22 W. R., 526 ; *Kattyani Debi* v. *Grish Chandra Banarji*, 23 W. R., 168 ; *Dina Nath Basu* v. *Grish Chandra Bandopadhya*, 23 W. R., 435 ; *Tileshari Koer* v. *Asmedh Koer*, 24 W. R., 101 ; *Biressar Panri* v. *Jogendro Chandra Deb*, 24 W. R., 261 ; but see *contra*, *Radhamani* v. *Ram Narain De*, 22 W. R., 440 ; *Guru Prasanno Banarji* v. *Sri Gopal Chaudhri*, 20 W. R., 99.) Under sec. 73, Act VIII of 1859, not only a person claiming to be in receipt and enjoyment of the rent can be made a party, but also a person who intervenes on the allegation that he has acquired the rights of the tenants, and has paid to the plaintiff a smaller sum. (*Madhu Sudan Basu* v. *Budhu Bhushan Haldar*, 22 W. R., 384 ; *Amatal Fatima Khanum* v. *Taranath Chand*, 24 W. R., 151 ; *Kartik Chandra Mukharji* v. *Muktaram Sirkar*, 10 W. R., 21.) But in a suit for enhanced rent, an intervenor claiming to be the real tenant has no right to be made a party. (*Kalinath Rai* v. *Ishar Chandra Ghosal*, 11 W. R., F. B., 23.) Where a person sued for rent sets up the title of a third party, and alleges that he holds under, and pays rent to, him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property, in respect of which the rent is claimed. Such a suit raises only two issues—viz. (1) Does the relation of landlord and tenant exist between the plaintiff and defendant ? (2) Are the alleged arrears of rent due and unpaid ? And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff, can properly be made a party to the trial of these issues. (*Lodai Mollah* v. *Kali Das Rai*, I. L. R., 8 Calc., 238 ; 10 C. L. R., 581.) There is no provi.

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sion in the present Act for third persons intervening and being parties to the suit, but under sec. 28, Act XIV of 1882, all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter; and under sec. 32, the Court may order that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate on and settle all the questions involved in the suit, be added. In his notes under this section in his edition of the Civil Procedure Code, Mr. Justice O'Kinealy has said that, "whether an intervenor in a rent-suit should be made a party or not, is not quite settled. The latest decision is to the effect that he should not (*Lodai Mollah* v. *Kali Das Rai*, I. L. R., 8 Calc., 238), and probably it is impossible to lay down beforehand in what cases an intervenor should be made a party." (See 3rd edit., p. 68.) In the case of *Lodai Mollah* v. *Kali Das Rai* (I. L. R., 8 Calc., 238), it is further said that sec. 28 of Act XIV of 1882 is not imperative, and that when in a rent-suit the question of the title of a third party is raised, it is better both in the interests of Government, and for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose. In a suit for rent, in which the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, it was held that when the plaintiff disputed this, and objected to such course being taken, it was improper to add such person as co-plaintiff, and that if added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. (*Gugli Sahu* v. *Prem Lal Sahu*, I. L. R., 7 Calc., 148.)

Benamidars.—In a suit for arrears of rent, in which an intervenor alleged that the plaintiff was merely his *benamidar*, it was held that it was wrong to introduce him into the case, and that any issue as to the alleged *benami* was foreign to the suit. (*Raghunath Prasad Singh* v. *Byjnath Sahai*, 24 W. R., 349.) Parties who choose to buy property in another person's name, and allow that person the opportunity of dealing with it as his own, cannot in equity be allowed to intervene in a suit brought by him for the rent of such property. (*Smith* v. *Mohkum Mahton*, 18 W. R., 526.) In *Tarini Kant Lahiri* v. *Krishnamani Chaudhri* (5 C. L. R., 179), in which the plaintiff, who derived title from A, who was the ostensible purchaser of certain immoveable property at an auction sale in execution of a decree against B, brought a suit to recover the rent of such property from the talukdar, the appellant was allowed to intervene, alleging that A was the *benamidar* of a third person, from whom he himself had purchased the property. The lower Court, however, refused to try the question of *benami* as not being admissible in a rent-suit. But on appeal it was held that the question of *benami* was properly raised in the suit, and should be tried. The High Court, however, said in this case, that if the lower Court thought the question of title could not be raised in a rent-suit, it ought not to have admitted the intervenor defendant as a party to the suit, but having admitted him, it ought to have tried the issue which he raised. On the other hand, a decree for arrears of rent may be given against the real lessees in possession, although no previous realisation of rent directly from them is established, and no written agreement is shewn to have been executed by them in their own names, another party being the ostensible holder of the lease and not denying liability. (*Jadunath Pal* v. *Prasanna Datta*, 9 W. R., 71. See also *Bipin Bihari Chaudhri* v. *Ram Chandra Rai*, 14 W. R., 12; 5 B. L. R., 234.) If a

zamindar sues an agent for rent due from an estate, this is no bar to the zamindar's afterwards suing the principal for rent, subsequently accrued due. But he cannot in the same suit sue both the principal and the agent : he must elect which of them he will proceed against. (*Prasanna Kumar Pal* v. *Kailash Chandra Pal*, 8 W. R., 428.) Similarly, a landlord cannot hold both the nominal and the real lessee liable for rent, but must make his election. (*Kamyab* v. *Umda Begam*, W. R., Sp. No., Act X, 88.)

Res judicata.—As a general rule, the decision of a Revenue Court in a suit under Act X of 1859 does not bar a suit on the same cause of action in the Civil Court, as the Revenue Court was not competent to decide the subsequent suit in the Civil Court. Thus, the decision of a Revenue Court as to the genuineness of a *mokarari* pottah, coming collaterally in issue before it, does not bar a subsequent suit relating to the pottah in the Civil Court. (*Janessar Das* v. *Gulzari Lal*, 11 W. R., 216.) A raiyat brought a suit against his landlord in the Revenue Court for the possession of certain land on the basis of a pottah which was found to be genuine. The landlord subsequently sued to eject his heirs from the same land. It was held by a Full Bench that the previous decision as to the pottah was not conclusive between the parties. (*Chandra Kumar Mandal* v. *Namni Khanum*, 19 W. R., 322.) In a suit brought under Act VIII, B C. of 1869, for rent at an enhanced rate, the defendants pleaded that a portion of the land for which rent was claimed was their *lakhiraj* land. The plaintiff relied on a previous suit instituted in the Collector's Court under Act X of 1859, in which it had been determined that the land was not *lakhiraj*. It was held by a Full Bench that the decision under Act X of 1859 was not conclusive, but that it was evidence to which the Civil Court was bound to give weight. (*Hari Sankar Mukharji* v. *Krishna Patro*, 24 W. R., 154 ; 15 B. L. R., 238.) In one case, however, it was held that when a suit for rent due on a certain stipulation in a patni lease was dismissed in the Revenue Court, another suit could not be brought in the Civil Court for damages laid at the amount of rent which would have been realized. (*Gopal Krishna Mukharji* v. *Madhu Sudan Pal*, W. R., Sp. No., Act X, 82.) As a general rule, the decision of an ordinary Civil Court in a suit for rent cognizable under Act VIII, B. C. of 1869, is binding in a subsequent suit between the same parties, which raises the same question in a different form. (*Mohima Chandra Mazumdar* v. *Asradha Dasi*, 21 W. R., 207.) But the causes of action in the two suits must have been really the same. A suit for *khas* possession, for instance, is no bar to a later suit for rent of the same land. (*Bhagwan Das* v. *Sheo Nyrain Singh*, 23 W. R., 253.) In a suit for arrears of rent the landlord produced a *jamabandi* signed by the defendant, admitting the area of the lands held and the rent payable to be as claimed by the plaintiff, and a decree was accordingly passed for the amount of arrears claimed, no further evidence being taken as to the extent of land. Subsequently, the tenant filed a suit against the landlord, alleging that he actually held a less area than that in respect of which he had been paying rent and claiming the right to have the land re-measured and to pay rent in accordance with such re-measurement. It was held in this case that the question in the latter suit was not *res judicata* by the judgment in the former suit. (*Raghu Nath Mandal* v. *Jagatbandhu Basu*, 8 C. L. R., 393.) But in another suit for arrears of rent, the defendant, while admitting the amount claimed, contended that it was payable for a larger area than that specified by the plaint. An issue was accordingly raised upon the question whether the amount was due upon the larger or smaller area, and decided against the defendant. The defendant afterwards brought a

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suit for a declaration that the money admitted to be due had been paid in respect of the larger area; but it was held that the suit was barred by the decree in the former suit. (*Bassan Lal Sukal* v. *Chandi Das*, 4 C. L. R., 1.) In another case the plaintiff obtained a patni lease of certain villages in 1861, and in 1865 was evicted from a portion of the property. She took no steps to obtain an abatement of her rent, but inasmuch as she did not pay any rent for 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of Rs. 155 from her rent, the 155 rupees representing the annual value of the property, which she had lost in consequence of the eviction. In this suit it was decided that the amount of abatement she was entitled to was Rs. 42. No appeal was made against that decision. In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent, she claimed the precise measure of abatement, viz., Rs. 155, which she had claimed in the suit brought against her by the defendant. It was held that the question was *res judicata*, it having been raised and decided in the former suit. (*Nobo Durga Dasi* v. *Faiz Baksh Chaudhuri*, I. L. R., 1 Calc., 202; 24 W. R., 403.) A rate of rent decreed to a landlord for a certain year is binding on the tenant as regards ensuing years, until the latter obtains a decree to a different effect. (*Man Mohini Debi* v. *Binod Bihari Saha*, 25 W. R., 10.) The plaintiff in a suit for rent having failed to prove the amount of rent claimed by him, the Court, in trying the issue, "what is the proper amount of rent payable to the plaintiff," gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed by the plaintiff. In a later suit the plaintiff sued the defendant for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. It was held that the decree in the former suit was *res judicata* as to the proper rate payable by the defendant. (*Jeo Lal Singh* v. *Sarfan*, 11 C. L. R., 483.) This decision overruled the case of *Pannu Singh* v. *Nirghan Singh* (I. L. R., 7 Calc., 298; 8 C. L. R., 310), in which the contrary had been held. An issue raised but not decided does not bar the decision of the same issue in a subsequent suit. (*Gopi Mohan Mazumdar* v. *Hills*, I. L. R., 3 Calc., 789; *Brindaban Chandra Sirkar* v. *Dhananjai Lashkar*, 4 C. L. R., 443; *Ghursobhit Ahir* v. *Ramdat Singh*, I. L. R., 5 Calc., 923; 6 C. L. R., 537.) But if an issue has been raised and decided in the judgment, the decision on that point is conclusive between the parties, even though not embodied in the decree (*Niamat Khan* v. *Bhadu Baldia*, I. L. R., 6 Calc., 319; 7 C. L. R., 227); and if an issue has been raised, and the suit dismissed because the plaintiff failed to adduce evidence on that point, that issue cannot be raised again in a subsequent suit for the same property. (*Kartik Chandra Pal* v. *Sridhar Mandal*, I. L. R., 12 Calc., 563.) It is, of course, essential that the parties in the two suits are the same, or litigate under the same title. Thus, when A brought a suit against B, claiming certain property as the tenant of C, who was also made a defendant in the suit, this suit was on the merits decided in favour of B. C then brought a suit against B, for possession of the same property, and it was held that this suit was not barred. (*Brajo Bihari Mitra* v. *Kedarnath Mazumdar*, I. L. R., 12 Calc., 580.) So a suit to set aside a pottah as fabricated is not barred by the fact that the same pottah was found to be genuine in a suit for rent against the same defendant by a *thikadar* of the plaintiff, such *thikadar* not being the plaintiff's representative. (*Wahid Ali* v. *Nath Turaho*, 24 W. R., 128.) But in another suit the plaintiffs sued to establish as against the defendants their title to certain land in the occupation of a tenant. In a previous suit, instituted by one of the present defendants against the tenant for rent, one of the plaintiffs (representing the right claimed by all of them) intervened on the ground that he

was the person entitled to the rent and failed to establish his claim. It was held that the plaintiffs were barred by the judgment in the former suit. (*Gobind Chandra Kundu* v. *Tarak Chandra Basu*, I. L. R., 3 Calc., 145 ; 1 C. L. R., 35.) A sued B to establish his right of possession to certain lands allowed to him under a *batwara*. In a previous suit by B, instituted after the *batwara*, against a tenant for arrears of rent due for a portion of the lands now in dispute, A intervened and was made a defendant on the sole ground that he was entitled to the rent, but failed to establish his claim. It was held that the suit was barred by the judgment in the former suit. (*Bimola Sundari Chaudhurani* v. *Panchanan Chaudhri*, I. L. R., 3 Calc., 705.) An issue which ought to have been raised in a previous suit cannot be raised in a subsequent one. In a suit for rent and ejectment, the defendant pleaded that his tenure was transferable and *istimrari*, and consequently protected under the Rent Law. In a former suit for arrears of former years, in which the defendant pleaded that his tenure was *istimrari*, the plaintiff obtained a decree for ejectment on non-payment of rent within 15 days. In that case the defendant saved his tenure by payment within the time stated. It was held that, inasmuch as the defendant might in the former suit, in which the nature of the tenure was put in issue have urged that his tenure was both transferable and *istimrari*, he could not in the present suit be allowed to alter his defence, and rely on the tenure being transferable. (*Dinomayi Debi* v. *Anangomayi*, 4 C. L. R., 599.)

Effect of ex-parte decrees for rent.—The rulings as to the effect of *ex-parte* decrees for rent are conflicting. In an early case (*Kali Kant Rai* v. *Ashrafunnissa*, 2 W. R., 326), it was ruled that in a suit for enhancement *ex-parte* summary decrees for rent are not satisfactory proof that a variation has taken place in the amount of the rent paid. Subsequently, it was said that a defendant who omits to defend a suit and allows an *ex-parte* decree to be passed against him cannot afterwards object to the decree as no evidence. (*Chandra Kumar Datta* v. *Jai Chandra Datta*, 19 W. R., 213.) But in another case, it was observed that where a suit is tried *ex-parte*, and no issues of fact are raised beyond the general issue involved in the claim, the decree considered as evidence is only evidence that the amount decreed was at the time due from the plaintiff to the defendant. (*Goya Prasad Aubasti* v. *Tarini Kant Lahiri*, 23 W. R., 149.) Then, in a later case decided by a Full Bench, it was held that an *ex-parte* decree for rent is admissible as evidence of the rate of rent in a subsequent suit between the same parties, even though it has become inoperative from not having been executed within the period of limitation. (*Bir Chandra Manik* v. *Ram Krishna Shaha*, 23 W. R., 128 ; 14 B. L. R., 370.) This was followed in a case in which it was ruled that a decree obtained *ex-parte* is in the absence of fraud or irregularity as binding for all purposes as a decree in a contested suit. Such a decree is admissible in evidence, even though the period for executing it has expired. (*Bir Chandra Manik* v. *Harish Chandra Das*, I. L. R., 3 Calc., 383.) Moreover, in *Jagadamba Dasi* v. *Tarakant Banarji* (6 C. L. R., 121), their Lordships of the Privy Council held that the effect of an appeal decided by them *ex-parte* could not on that ground be disputed. Recently, however, it has been held that a decree obtained *ex-parte*, is not final within the meaning of expl. 4, sec. 13 of Act X of 1877. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. (*Nil Mani Singh* v. *Hira Lal Das*, I. L. R., 7 Calc., 23 ; 8 C. L. R., 257.) This was followed in a suit for arrears of rent of a half share of land in which the plaintiffs relied upon an *ex-parte* decree for rent at a certain rate, which they had obtained

in 1869 against the tenants of this share. It did not appear that the *ex-parte* decree had been executed. It was accordingly held that it was open to the defendants to dispute the rate of rent claimed, and that the plaintiffs were bound to prove that they were entitled to recover it. (*Bhagirath Patni* v. *Ram Lochan Deb*, I. L. R., 8 Calc., 275); see also *Ram Sundar Tewari* v. *Srinath Dewasi* (10 W. R., 215; 14 B. L. R., 371); and *Bishnu Prakash Singh* v. *Ratan Gir Chela* (20 W. R., 3). The question as to the effect of *ex-parte* decree has recently been referred to a Full Bench, and is, it is understood, still under its consideration.

A tenant cannot raise an interpleader suit.—Under sec. 474, C. P. C., tenants are prohibited from suing their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through the landlords.

Set-off.—A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set-off against sums due for rent. (*Watson & Co.* v. *Braja Sundari Debi*, 16 W. R., 225.) In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted, it was held that the defendant was not entitled to set-off under sec. 121, Act VIII of 1859, the plaintiff's share of the Government revenue of the whole estate which had been paid by the defendant for the period for which the arrears of rent were alleged to be due. It was further held that there was no such connection between the claim of the plaintiff and the counter-claim of the defendant, as would entitle the defendant as a matter of equity, apart from legislative enactment, to a set-off. (*Hossaina Bibi* v. *Smith*, 22 W. R., 15; 13 B. L. R., 440.) In a suit by a zamindar for arrears of rent, the defendant alleged that his tenure had been placed under the management of the Collector, and had so remained for a number of years, and that the Collector, from money realized by him as manager, had, in addition to satisfying all other claims of the plaintiff, paid the rents accruing not only during the period of his management but up to, and inclusive of, the year, the arrears of rent for which were claimed in the suit. The lower Court refused to consider the defendant's plea, on the ground that it was in the nature of a set-off, and that not being a debt due from the plaintiff to the defendant, it was not such a set-off as could be allowed by the Court. It was, however, held that the plaintiff's plea was a plea of payment merely and not in the nature of set-off. (*Kunja Bihari Singh* v. *Nil Mani Singh*, 4 C. L. R., 296.) In a suit by a zamindar against the wife of the Nawab Nazim of Bengal for the rent of a patni for the years 1284 and 1285, it appeared that the defendant had paid the revenue for 1284 to Government, and it was contended that the monies paid for revenue were payments made to the plaintiff so as to entitle him under secs. 59 and 61 of the Contract Act to appropriate them in discharge of the rent of 1283, which was barred by limitation. But it was held that these payments were properly subject of set-off as money paid to the use of the plaintiff, and that they could not be appropriated under the Contract Act to the rent of 1283. (*Rukmini Ballabh Rai* v. *Mulk Jamania Begam*, 12 C. L. R., 534.) See also notes to secs. 38 and 52, pp. 88 and 116.

Waiver.—In 1267 the plaintiff obtained a decree in a suit to enhance the defendant's rent. It was held that the acceptance by the plaintiff of the old rent from 1268 to 1271 was no waiver of his claim to the higher rent decreed to him. (*Lauder* v. *Binod Lal Ghosh*, 6 W. R., Act X, 37.)

Two-fold claim for both arrears of rent and ejectment not maintainable.—Where A, after notice to his tenants to pay rent at an enhanced rate from the commencement of the ensuing year or to quit, brought a suit for a higher rate of rent or ejectment in the alternative, it was held that in such a suit the plaintiff could not insist upon a two-fold claim for both rent and ejectment, nor obtain a decree for rent for the first quarter and ejectment thereafter. (*Mahamaya Gupta* v. *Nil Madhab Rai*, I. L. R., 11 Calc., 533.)

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

Jurisdiction in proceedings under Act. Sec. 35, Act VIII, B.C., 1869.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Sub-section (1) of this section makes a change in the law. In the corresponding section in Act VIII, of 1869, B. C., viz., sec. 35, it was provided that the cause of action in certain suits enumerated therein, shall be deemed to have arisen within the jurisdiction of the Court, which would have had jurisdiction to entertain a suit for the recovery of the land, or other immoveable property in relation to which the cause of action arose, and shall be brought in such Court and "in no other Court." These words "and in no other Court" have not been inserted in the present section. The result of their omission is that under sec. 17, C. P. C., a suit between landlord and tenant as such may now be brought (1) in the Court, which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought; (2) in the Court, within the local limits of whose jurisdiction all the defendants at the time of the commencement of the suit actually and voluntarily reside, or carry on business or personally work for gain; and (3) in the Court within the local limits of whose jurisdiction any of the defendants at the time of the commencement of the suit, actually or voluntarily resides, or carries on business or personally works for gain; provided that either the leave of the Court is given, or that the defendants who do not reside, or carry on business or personally work for gain, acquiesce in such institution. A suit between a landlord and tenant as such can, under sec. 19, C. P. C., be brought in any Court within the local limits of whose jurisdiction any portion of the lands of the tenure or holding is situated, and a landlord can, under sec. 45, C. P. C., with the acquiescence of the Court combine in one suit causes of action arising out of several tenancies against the same defendant, provided that all the lands to which they relate are situated within the jurisdiction of the Court, but he

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cannot do so, if the lands to which they relate are situated within the jurisdictions of several Courts.

Suits for arrears of rent of homestead or bastu land.—Under sec. 6, Act XI of 1865, suits for arrears of rent for homestead or *bastu* land lay in the Court of Small Causes; but now under cl. (8), Sched. II, Act IX of 1887 (the Provincial Small Cause Courts Act), a Mofussil Small Cause Court has no jurisdiction to entertain such suits, which are consequently cognizable by the ordinary Civil Courts. (*Uma Charn Mandal* v. *Bijari Bewa*, I. L. R., 15 Calc., 174.)

Court-fees.—Section 7, sub-sec. 11, Act VII of 1870, lays down that in suits (1) to enhance the rent of a tenant having a right of occupancy; (2) to recover the occupancy of land, from which a tenant has been illegally ejected by the landlord; and (3) for abatement of rent, the fees payable under the Act shall be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

145. Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or gumashtas to be recognized agents. Sec 37, Act VIII. B C, 1869; sec. 69, Act X of 1859.

This written authority requires to be stamped under art. 50, Sched. I, Act I of 1879. (*Raghu Nandan Thakur* v. *Ram Chandra Kupali*, 10 W. R., F. B., 39.) In this article it is explained that more persons than one, when belonging to one firm, shall be deemed to be one person. The Madras High Court in a reference under the Stamp Act held that thirty-six persons jointly interested in a certain sum of money could execute one power-of-attorney authorizing a certain person to appear before an officer and receive payment thereof (I. L. R., 9 Mad., 358). But the Calcutta High Court has held that when an instrument contains a several power-of-attorney conferred by each of two or more persons, it requires a separate stamp in respect of each power. (*In the matter of Jai Krishna Mukharji, per* Garth, C. J., and Field and Wilson, JJ., No. 1504 of 1885, decided on 10th December, 1885.) A recognized agent may make or do any appearance, application, or act required or authorized by law to be made or done by a party to a suit or appeal, except when otherwise expressly provided by law (sec. 36, Act XIV of 1882). But a recognized agent cannot sue or appear in his own name (*Mokha Harakraj Joshi* v. *Bisseswar Das*, 5 B. L. R., App., 11; 13 W. R., 344; and so a naib or gumashta must institute or defend a suit in the landlord's name, and can only act as the landlord's agent in conducting it. (*Madhu Sudan Singh* v. *Moran & Co.*, 11 W. R., 43; *Kunju Bihari Rai* v. *Purna Chandra Chatarji*, I. L. R., 9 Calc., 450; 12 C. L. R., 55.) A newly appointed tahsildar stands in the same position in respect of arrears of rent which accrued during the time of his predecessor, as he does in respect of rent which accrued during his own

time. It is his duty to collect both (*Madhu Sudan Singh* v. *Moran & Co.*, 11 W. R., 43.)

A naib or gumashta cannot grant leases.—It does not fall within the ordinary scope of the duties of a mofussil naib to grant pottahs for fixed rents. It is requisite in such cases that express authority should be proved to make the grants valid. (*Golakmani Debi* v. *Assimuddin*, 1 W. R., 56; *Panchanan Basu* v. *Piari Mohan Deb*, 2 W. R., 225; *Annoda Prasad Banarji* v. *Chandra Sikhar Deb*, 7 W. R., 394.) It does not lie within the ordinary scope of a naib or gumashta's authority to grant leases. Special authority to grant them is necessary. (*Uma Tara Debi* v. *Pina Bibi*, 2 W. R., 155; *Kali Kumar Das* v. *Anis*, 3 W. R., Act X, 1; *Abilak Rai* v. *Dalial Rai*, I. L. R., 3 Calc., 557.)

A gumashta cannot recognize the transfer of a holding.—A gumashta has no authority to recognize the transfer of a holding and his receipt of rent from the transferee will not bind the landlord. (*Bhajohari Bonik* v. *Aka Ghulam Ali*, 16 W. R., 97.)

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Special register of suits.
Sec. 42, Act VIII, B. C., 1869.

The particulars referred to in sec. 58 of the Code of Civil Procedure are—(*a*) the name of the Court; (*b*) the name, description, and place of residence of the plaintiff; (*c*) the name, description, and place of residence of the defendant; (*d*) a concise statement of the cause of action, and when and where it arose; (*e*) the relief demanded; and (*f*) any amount set off or relinquished.

By notification dated the 20th February, 1886, published in the *Calcutta Gazette* of March 3rd, 1886, Part I, p. 142, the Local Government has directed that the special register to be kept by each Civil Court, under the provisions of this section shall be in the form prescribed by sec. 58, Act XIV of 1858, and numbered as 116 in the 4th schedule annexed to that Act.

A rent-suit should not be dismissed because it should have been brought as a civil suit and vice versa.—The provision in Act VIII of 1869, B. C., directing suits instituted under that Act to be entered in a separate register was for statistical purposes, and not for the purpose of separating into parts the jurisdiction exercised by one Court, so as to render a suit brought under that Act liable to be struck off in order that a fresh suit might be brought under Act VIII of 1859 in the same Court and on the same cause of action, even supposing that the suit was not for rent, and that the consideration stipulated to be paid for the defendant's occupation of the land was charity and not rent. (*Jallaluddin* v. *Burne*, 18 W. R., 99.) A suit lying under Act VIII of 1859, and in the plaint of which it is not said that the suit is brought under Act VIII of 1869, B. C., should not be dismissed

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owing to its having by some mistake of the office been registered in the book of rent suits. (*Ramnarain Mitra* v. *Nobin Chandra Murdafarash*, 18 W. R., 208.) There should be no question in the mind of a Court as to which side of the Court is to entertain the suit, or under what Act it is to be tried. It was one of the purposes of the legislature, when it removed the cognizance of a certain class of actions from the Collector's Court to the Munsif's Court that there should no longer be any question in any case whether the suitor had invoked the exercise of the right jurisdiction, and whether the Court was competent to do complete justice between the parties. It is the plain duty of a Court when a suit is brought before it to entertain it and to endeavour to try the matter in question between the parties upon the whole merits. (*Puriag Datta Rai* v. *Feku Rai*, 19 W. R., 160.) Two causes of action, one by plaintiff as purchaser of arrears of rent, and the other for rent due, were held to be properly joined in one suit cognizable by the Civil Court without any such distinction as that of different sides of the Court. (*Bhagwan Sahai* v. *Sangessar Chaudhri*, 19 W. R., 431.) A Civil Court has jurisdiction to try a suit for possession whether it be brought under Act VIII, B. C. of 1869, or as a regular civil suit. (*Gobind Mahtun* v. *Ram Khelawun Singh*, 22 W. R, 478.)

147. Subject to the provisions of section 373 of the Code of Civil Procedure,* where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits. XIV of 1882 *

This is an important provision introduced for the purpose of preventing a tenant being harassed by successive suits for arrears of rent. But it applies only to "raiyats" and "holdings," and not to tenure-holders, or under-raiyats, and their tenancies. Section 373 of Act XIV of 1885 refers to cases in which a plaintiff is allowed, owing to some formal defect or for some other sufficient reason, to withdraw his suit, or abandon part of his claim, with liberty to bring a fresh suit for the same subject-matter. But one of several plaintiffs cannot be permitted to withdraw without the consent of the others. When so allowed to withdraw, the plaintiff will, under this section, not be required to wait three months before bringing a fresh suit.

Suit must include whole claim.—In connection with the subject of suits for arrears of rent, the provisions of sec. 43, Act XIV of 1882, and the illustration to that section are very important. They are as follows:—"Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies,

he shall not afterwards sue for the remedy so omitted. . . . . CHAP. XIII. SEC. 147.

Illustration.—"A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881."

Claim for arrears of rent must include all rent due at time of institution.—Under the provisions of sec. 43, C. P. C., and the illustration to it, the High Court, in the case of *Turak Chandra Mukharji* v. *Panchu Mohini Debi* (I. L. R., 6 Calc., 791; 8 C. L. R., 297), has decided that when arrears of rent for more than one year are due, and a plaintiff sues only for the arrears of the earlier year or years, and omits to sue for the arrears of the later year or years, his suit for the arrears of the later period is barred, and he cannot subsequently sue for them. This decision, which was followed in the recent cases of *Sheo Sankar Sahai* v. *Hridoy Narain* (I. L. R., 9 Calc., 143; 12 C. L. R, 34); and *Narain Kumari* v. *Raghu Mahapatro* (I. L. R., 12 Calc., 50), sets aside the ruling in the case of *Satto Charn Ghosal* v. *Abhoy Nand Das* (2 W. R., Act X, 31), in which it was held that a separate suit would lie for the rents of each year, and also the rulings in the cases of *Ram Sundar Sen* v. *Krishna Chandra Gupta* (17 W. R., 380), and *Krishna Kinkar Paramanik* v. *Ram Dhan Chetlangia* (24 W. R., 326), in which it was held that the recovery of an instalment of rent was not barred merely because it was not included in a suit for arrears of rent instituted after it became due. Under the provisions of sec. 43, Act XIV of 1882, these rulings are no longer good law. (See also *Madhu Prakash Singh* v. *Murli Manohar*, I. L. R., 5 All., 406). Now, under the High Court decision in the case of *Turak Chandra Mukharji* v. *Panchu Mohini Debi*, there is no difference between a suit omitting to claim an earlier rent and a suit omitting to claim a later rent which is due at the date of its institution. In both cases, the plaintiff's claim for the rent he omits to sue for is barred. A landlord must now, when bringing a suit for arrears of rent, claim all the rent due to him at the time of institution.

Under the old law a landlord failing in suit for enhanced rent could get a decree for rent at the old rate.—There has hitherto been a conflict of rulings as to whether under the old law a landlord, failing in a suit for enhanced rent, could get a decree for rent at the old rate or not. On the one hand, in *Khedarunnissa Bibi* v. *Budhi Bibi* (13 W. R., 317), it was said that the cause of action in a suit for enhanced rent is not the same as the cause of action in a suit for rent at the rate admitted by the defendant as the previous rent, and that therefore the law of *res judicata* does not apply in bar. Again, in the Privy Council decision of *Surasundari Debi* v. *Ghulam Ali* (19 W. R., 142; 15 B. L. R., 125 note), it was said "their Lordships are of opinion that a suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed, and that it is founded entirely upon different principles. To a suit for enhancement it would be no bar to plead that all arrears according to the original rate had been paid." (See also *Haronath Rai* v. *Gobind Chandra Datta*, L. R., 2 I. A., 193; 15 B. L. R., 120; and *the Raja of Pittapur* v. *Venkata Mahipati Surya*, L. R., 12 I. A., 116; I. L. R., 8 Mad., 520.) In several cases, too, the High Court held that if a plaintiff failed in a suit for enhancement owing to the notice of enhancement not having been proved, he was not precluded from obtaining a decree for the arrears of rent at the old rate (*Ghanshyam Singh* v. *Tara Prasad Kundu*, I. L. R., 8 Calc., 465; 10 C. L. R, 447; *Brajo Nath Tewari* v. *Grant*, 22 W. R., 13; *Bhagwan Datta Jha* v. *Sheo Mangal Singh*, 22 W. R., 256; *Bhobo Sundari Chaudhurani* v. *Kashi Nath Acharji*, 22 W. R., 351). On the other hand, in the case of *Kanak Chandra Mukharji* v. *Guru Das*

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Biswas, I. L. R., 9 Calc., 919; 12 C. L. R., 599), it was held that under secs. 42 and 43 of the Civil Procedure Code "plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rent to sue for the original rent for the same and previous years." This conflict of authorities has, however, been set at rest by the Full Bench decision in the case of *Sadaruddin Ahmad* v. *Beni Madhub Rai* (I. L. R., 15 Calc., 145), in which *Kanak Chundra Mukharji* v. *Guru Das Biswas* was overruled, and it was held that the dismissal of a suit for rent at an enhanced rate is no bar to a subsequent suit for rent at the rate originally fixed.

Present law.—Under the present law the question cannot arise. Under the present Act no suits for rent at an enhanced rate can be brought. An enhancement-suit under the present Act is a suit to enhance and determine the rate of the enhanced rent. The claim in such a suit cannot be considered as arising out of the same subject-matter as a claim for arrears of rent; for, as pointed out in the Privy Council decision in the case of *Sura Sundari Debi* v. *Ghulam Ali* (19 W. R, 142; 15 B L. R., 125 note), "a suit to enhance is very different from a suit to recover arrears of rent at the rate originally fixed, and is founded entirely on different principles;" so that now a landlord who fails in an enhancement-suit under the present Act will not be debarred from suing again for arrears at the old or admitted rate.

Procedure in rent-suits.
XIV of 1882.

148. The following rules shall apply to suits for the recovery of rent :—

(*a*) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit :

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant ; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification ;

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only :

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in

a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866 ;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

(*e*) a written statement shall not be filed without the leave of the Court :

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not :

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears :

(*h*) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

Clause (a). Interrogatories and discovery inapplicable to rent-suits.—Sections 121 to 127 of the Civil Procedure Code relate to the examination of parties by interrogatories. Section 129 gives a Court power to order discovery of documents. Section 305 gives a Court power to postpone a sale to enable the defendant to raise the amount of the decree by mortgage, lease, or private sale of the property. Sections 320 to 326 refer to the transfer to the Collector for execution of decrees relating to immoveable property.

Reading this clause with sec. 143, it is clear that the provisions of the Civil Procedure Code relating to execution, including those of sec. 244, are applicable to decrees obtained under this Act. The provisions of sec. 244 apply to proceedings in execution of decrees under Act VIII of 1869, B. C., but not under Act X of 1859 (*Brajo Gopal Sirkar* v. *Basirunnissa Bibi*, I. L. R., 15 Calc., 179). The procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. Section 311 does not only apply to sales made under Chap. XIX of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section. (*Azizunnissa Khatun* v. *Gora Chand Das*, I. L. R., 7 Calc., 163.)

Clause (b). The plaint.—For the particulars which under sec. 50, Act XIV of 1882, must be specified in the plaint, see note to sec. 146.

This clause does not explain what a Court is to do when a plaint does not contain the particulars specified in this clause. But it would, no doubt, be justified in returning the plaint for amendment or in rejecting it, if the plaint did not contain the particulars essential for the disposal of the suit. It should be remembered that it is not essential to the decision of all cases that the extent and boundaries of the land held by the tenant should be given. Thus, in a suit for arrears of rent the question of boundaries is immaterial, and the question

of extent is material only if the rent sued for is calculated at a particular rate per kotta or bigha. In a suit to recover possession or for ejectment, the question of boundaries is material. (*Mahomed Ismail* v. *Dhandar Kishor Narain*, 25 W. R., 39.)

Clause (c). The summons.—In High Court Circular No. 379 of the 4th February, 1871, issued under the provisions of Act VIII (B. C.) of 1869, the High Court has directed that no suit for arrears of rent is to be proceeded with *ex-parte* until the expiry of 14 days from the date of the service of the summons.

Clause (d). Service of summons by post.—The High Court has not yet framed any rule for the service of the summons by post. The latter part of this clause is in accordance with the ruling in the case of *Lutf Ali Miah* v. *Piari Mohan Rai* (16 W. R., 223), in which it was laid down that a person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents. See also *Jogendro Chandra Ghosh* v. *Dwarkanath Karmokar* (I. L. R., 15 Calc., 681.)

Clause (e). Stamps on written statements.—A written statement filed by a defendant in a civil suit at the first hearing does not require a stamp. (*Cherag Ali* v. *Kadir Mahomed*, 12 C. L. R, 367; *Nagu* v. *Yeknath*, I. L. R., 5 Bom., 400.)

A written statement called for by the Court after the first hearing is also exempt from stamp duty under sec. 19, cl. iii, Act VII of 1870. (*Nagu* v. *Yeknath*, I. L. R., 5 Bom., 400.)

Clause (f). Evidence how to be recorded.—This clause is very important. It does away with the necessity of recording at length the evidence of witnesses in suits for the recovery of rent. It allows the Judge, as the examination of each witness proceeds, to make merely a memorandum of the substance of what the witness deposes, which memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record. The memorandum should be written legibly in the vernacular of the Judge, or in English, if he is sufficiently acquainted with that language, and should be dated, as well as signed by the Judge. Under sec. 189, C. P. C., the same procedure should be followed in all cases in which no appeal is allowed (see sec. 153).

Clause (g). Execution of decrees for ejectment.—Execution of decrees for ejectment for arrears cannot be granted when the Court is passing the decree, for, under sec. 66 (2), such decrees are not to be executed at all if the amount of the decree and costs of the suit are paid into Court within fifteen days of the date of the decree.

Clause (h). The assignment of decrees for arrears of rent.—The provisions of this clause are intended to prevent the transfer of decrees for speculative purposes. Such transfers were permitted under the old law, although the landlord's interest was not vested in the assignee. (*Harinath Mazumdar* v. *Moran & Co.*, W. R., Sp. No., Act X, 127; *In the matter* of *Janmejai Mukharji*, 14 W. R., 215; *Ridai Mani Barmani* v. *Sibbold*, 15 W. R., 344; *Bhagwan Sahai* v. *Sangessar Chaudhri*, 19 W. R., 431.) In a recent case *Kailash Chandra Rai* v. *Jadunath Rai* (I. L. R., 14 Calc., 380), it has been held that the provisions of this clause are to a certain extent retrospective; for it was held that the fact that an assignment of a decree for arrears of rent was made before the Tenancy Act does not protect from the provisions of sec. 148 (*h*), an assignee, who proceeds to execution afterwards; but execution cannot be refused where before that Act came into operation,

the assignment had been recognized by a Court of execution under sec. 232 of the Civil Procedure Code.

Differences between procedure in suits for the recovery of rent and ordinary civil suits.—By the provisions of this section, the procedure which has to be followed in an ordinary civil suit has been much abbreviated. In the following respects, the procedure in a suit for the recovery of rent now differs from that of an ordinary civil suit :—(1) The summons, as a rule, is for the final disposal of the case ; (2) the defendant can file no written statement without the leave of the Court ; (3) there can be no interrogatories of the parties, or discovery of documents ; (4) the evidence of the witnesses need not be recorded at length ; (5) as a rule, execution may issue on the application of the decree-holder at the time the decree is passed, unless it is a decree for ejectment for arrears ; and (6) a judgment-debtor cannot obtain a suspension of the sale of his immoveable property to enable him to raise the amount of the decree by mortgage, lease, or private sale. At one time it was proposed to introduce a short and summary procedure for the recovery of rents, analogous to that on negotiable instruments under Chap. XXXIX of the Civil Procedure Code, but it was finally decided that it would be unsafe to do so, and that the provisions of the present section and of the subsequent sections of this chapter contain all the changes that the Legislature could safely make by way of shortening the proceedings in rent-suits.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

This is an important modification of the law, made for the purpose of facilitating the recovery of arrears of rent, and of preventing landlords being harassed by their tenants who are apt to unduly protract suits by raising frivolous pleas as to the rent being due to third persons. The section has, however, been very unhappily worded, for, in the first place, it would seem that the defendant can always evade

the provisions of the section by pleading that no rent is due by him, or that it has been paid by him to a third person. In the second place, it is not at all clear what should be done when the defendant pays into Court the amount he admits to be due from him. No doubt it is intended that the Court shall postpone the case for three months to enable the third person to institute the suit referred to in sub-sec. (3). Probably it should postpone the suit for the arrears of rent for even more than three months to enable the suit instituted by the third person to be disposed of. But it is very doubtful whether, after the lapse of three months or more, the Court should then take cognizance of the defendant's plea that the rent is due to a third person or not. From the terms of sec. 151, however, it would seem that it should. But there would seem to be no use in the Court's doing so. If the third person has either instituted a suit and failed to obtain the order referred to in sub-sec. (3), or has not instituted the suit at all, the amount paid into Court is to be at once paid over to the plaintiff. What benefit is to be derived from this payment, if the Court is to proceed at once to consider whether or not it is really due by the defendant to the plaintiff or by the defendant to somebody else? On the other hand, if the third person obtains an order restraining payment of the money, is the Court to proceed to consider and decide whether the defendant owes a similar sum to the plaintiff? Its doing so may result in the finding that the defendant is to pay the same sum twice over. Moreover, it would appear that the third person should not be allowed to intervene in the suit brought for arrears of rent by the plaintiff. The questions at issue between this third person and the plaintiff should be raised separately and independently of the rent suit. Intervenors in rent-suits are no more allowed under this Act than they were under Act VIII (B. C.) of 1869. The rulings on the subject of intervenors under the previous Acts will be found collected at p. 207.

Sub-section (3.)—It has been held in *Jagadamba Debi* v. *Pratap Ghosh* (I. L. R., 14 Calc., 537), that a suit by a third person under sec. 149 (3) of the Bengal Tenancy Act is not a title suit and need not be stamped as such. In the same case it was held by Tottenham, J., that such a suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.

Sub-section (4).—The meaning of sub-sec. (4) is, that any third person claiming money, which has been paid to a plaintiff under sub-sec. (3), may always bring a regular civil suit to recover the money from the plaintiff, notwithstanding the fact that he did not institute a suit against the plaintiff within the three months mentioned in sub-sec. (3). The period of limitation for such suits would seem to be three years under art. 109, Sched. II, Act XV of 1877.

Service of Notice.—The mode of service of the notice referred to in sub-sec. (2) is prescribed by Rule 3, Chap. I of the Rules to be found in Appendix I.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take

Payment into Court of money admitted to be due to landlord.

cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

This is also a modification of the law introduced to facilitate the recovery of arrears of rent, and to prevent the defendant protracting the proceedings by raising merely vexatious pleas of excessive demand of rent.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Appeals in rent-suits. Sec. 102, Act VIII, B.C., 1869; sec. 153, Act X of 1859.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in

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him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the District Judge thinks fit.

The provisions of this section, making final the decree or order of a Subordinate Judge in a suit of the value of not more than one hundred rupees, and of a specially empowered judicial officer in a suit of the value of not more than fifty rupees, are new.

"District Judge"—Under sec. 102 of Act VIII of 1869, B. C., it was only the order of a District Judge in such suits, which was to be final ; but the term "District Judge" was held to include an Additional Judge. (*Brajo Misra* v. *Ahladi Misrani*, 21 W. R., 320 ; 13 B. L. R., 376 ; see *contra*, *Nobo Krishna Kundu* v. *Nazir Mahomed*, 19 W. R., 202 ; 10 B. L. R, App., 30.)

No officer vested with powers under clause (b).—No officer or class of officers has as yet been specially empowered by Government to exercise final jurisdiction in suits for recovery of rent under the provisions of clause (*b*).

Rent.—Under sec. 3 (5) rent does not include cesses, except in secs. 53 to 58, secs. 72 to 78, Chap XII, and Sched. III. The word "rent" in this section, therefore, does not include road cess, so the provisions of this section do not apply to cases in which not rent, but road cess, is sued for.

Suit.—The word "suit" in the corresponding sections of Act VIII of 1869, B.C., and Act X of 1859 was held to cover all proceedings prior to decree and subsequent ones in execution. (*Krishna Kumar Chakrabartti* v. *Anand Kumar Datta*, 19 W. R., 307 ; *Deb Kumari Dasi* v. *Ganga Dhar Datta*, 17 W. R., 189 ; *Kedar Nath Biswas* v. *Haro Prasad Rai*, 23 W. R., 207 ; *Parbati Charan Sen* v. *Mandari*, I. L. R., 5 Calc., 594.)

Appeals.—The provisions of this section apply only to suits for the recovery of rent ; so that an appeal will lie in all other classes of suits under the Tenancy Act, as well as in suits for the recovery of rent in which any of the questions referred to in the section have been decided. But no appeal lies from an order rejecting an application under sec. 93 of this Act for the appointment of a common manager, as such an application is not a suit. (*Hossain Baksh* v. *Mutukdhari Lal*, I. L. R., 14 Calc., 312.)

Second appeals.—The provisions of Chap. XLII of the Civil Procedure Code are, of course, applicable to suits under this Act, and, consequently, a second appeal to the High Court will, except in cases referred to in this section, only lie on the grounds (*a*) of the decision being contrary to law or usage having the force of law ; (*b*) of the decision having failed to determine some material issue of law or usage having the force of law ; and (*c*) of a substantial error or defect in the procedure, which may possibly have affected the decision on the merits. (Sec. 584, C. P. C.) The High Court can, under sec. 622, C. P. C., set aside the judgment of a District Judge in a suit for arrears of rent, when the District Judge has acted illegally in the exercise of his jurisdiction. (*Jagabandhu Patak* v. *Jadu Ghosh Alkushi*, I. L. R., 15 Calc., 47.)

When amount claimed does not exceed one hundred rupees.—Unless it appears either from the finding of the District Judge or elsewhere upon the proceedings that the amount claimed in the suit does not exceed one hundred rupees,

the High Court has no right to draw any inference to that effect. (*Tulsi Pandi* v. *Bachu Lal*, I. L. R., 9 Calc., 596 ; 12 C. L. R., 223.) An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by sec. 52 of Bengal Act VIII of 1869, confer such right of appeal. (*Parbati Charn Sen* v. *Mandari*, I. L. R., 5 Calc., 594.) But see *Ramjan Khan* v. *Ramjan Chamar*, I. L. R., 10 Calc., 89, which was, however, a suit under the Chutia Nagpur Landlord and Tenant Act (I of 1879, B. C.) A second appeal will not lie in a suit for arrears of rent and ejectment, when the sum claimed is less than Rs. 100, and when a decree is given for the rent only, and the claim for ejectment is disallowed. (*Brajanath Srimani* v. *Troilakhya Nath Mitra*, decided by Wilson and O'Kinealy, JJ., June 16th, 1887. No second appeal lies to the High Court from the decision of a District Judge in a suit for rent under Rs. 100, when no question of right to enhance or vary the right of a raiyat or tenant, nor any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto has been determined by the judgment. (*Langessar Koer* v. *Sukha Ojha*, I. L. R., 3 Calc., 151 ; *Purna Chandra Rai* v. *Krishna Chandra Singh*, 23 W. R., 171.) In the case of (*Brajo Nath Srimani* v *Troilokhya Nath Mitra*, which decided under the Tenancy Act on the 16th June, 1887, the plaintiff sued for arrears of rent and ejectment, and obtained a decree for arrears of rent only, his prayer for ejectment being disallowed. The defendant appealed, but as the decree was for less than Rs. 100, and no decree for ejectment had been given, it was held that no appeal lay. (See also *Ramjan Khan* v. *Ramjan Chamar*, I. L. R., 10 Calc., 89.)

Questions relating to title in land, or to some interest in land as between parties having conflicting claims thereto.—When a case was decided solely on the want of proof of the relation of landlord and tenant between the parties, it was held that no special appeal lay to the High Court. (*Hari Mohan Mazumdar* v. *Dwarka Nath Sen*, 18 W. R., 42 ; *Kripamayi Debi* v. *Draupadi Chaudhurani*, 21 W. R., 213 ; *Karim* v *Mukhoda Sundari Dasi*, 23 W. R., 11, 268 ; 15 B. L. R., 111.) Where a tenant merely repudiates the tenancy without denying the landlord's title, no appeal will lie. (*Ishan Chandra Ghosal* v. *Barnomayi Dasi*, 16 W. R., 233.) Where a defendant pleaded that the plaintiff had ceased to have any interest in the land, and the suit was dismissed, there was no finding as between the plaintiff and any other person claiming title to the land. (*Donzelle* v. *Tekan Nodaf*, 2 C. L. R., 558.) In a suit in which the defendant (raiyat) sets up the title of a third person, who is not made a party, the decision cannot be considered a binding decision in respect of title as between parties having conflicting claims to land. (*Dilbar* v. *Ishar Chandra Rai*, 21 W. R., 36 ; *Kashi Ram Das* v. *Sham Mohini*, 23 W. R., 227 ; *Raj Krishna Mukharji* v. *Srinath Datta*, 23 W. R., 408 ; *Durga Narain Sen* v. *Ram Lal Chhutar*, I. L. R., 7 Calc., 330 ; *Lodai Mollah* v. *Kali Das Rai*, I. L. R., 8 Calc., 238 ; *Ram Prasad Rai* v. *Sharup Paramanik*, I. L. R., 8 Calc., 712.) In a suit in which plaintiff claims rent as zamindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to, or some interest in, land. (*Raj Krishna Mukharji* v. *Piari Mohan Mukharji*, 24 W. R., 114.) In a suit for ejectment valued at under Rs. 100, the defendants, who were sued as yearly tenants, replied that their tenure was a *maurasi guzasta* tenure, and in proof of their allegation adduced evidence. The lower Courts considered that plaintiff's allegation was well founded. Held, that although the value of the suit

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was under Rs. 100 the appeal was not barred, as the lower Court had determined a question of law as to whether the tenure was *guzasta*. (*Baijinath Sahu* v. *Ramdaur Rai*, 7 C. L. R., 369.)

Questions of right to enhance or vary the rent of a tenant.—It is immaterial whether the rate of rent was varied, if the Judge did not decide the question of the right to vary the rent. (*Watson & Co.* v. *Mohendra Nath Pal*, 23 W. R., 436.) In a suit in which the raiyat denied execution of a document, on the basis of which the suit was brought, and produced evidence to show that the rates mentioned in it were not correct, it was held that this involved no question of a right to vary the rent. (*Nitresar Singh* v. *Joti Teli*, 23 W. R., 343; see also *Golak Chandra Datta* v. *Miah Rajah Miji*, 17 W. R., 119; *Watson & Co.* v. *Ramdhan Ghosh*, 17 W. R., 496.) A rent-suit, in which there is no dispute as to the amount of the jama, and the only question is whether it is to be paid in instalments or in a lump sum, cannot be said to involve a question of right to enhance or vary the rent. (*Piari Mohan Mukharji* v. *Madhab Chandra*, 23 W. R., 385.)

Questions as to amount payable.—The words, "a question of the amount of rent annually payable by the tenant," make a change in the law, and allow an appeal in cases in which an appeal was not allowed under the old law, for, under sec. 102, Act VIII, B. C. of 1869, no appeal lay in cases in which merely a question as to the amount of rent payable was involved. (*Haro Prasad Chakrabartti* v. *Sridam Chandra Chaudhri*, 20 W. R., 15; *Harish Chandra Chakrabartti* v. *Hari Bewah*, 20 W. R., 16; *Narabdessar Prasad Rai* v. *Jangli*, 24 W. R., 49.) In certain rent-suits, the amount claimed being under Rs. 100, the question was raised as to whether the plaintiff was entitled to the whole 16 ans. of the rent or only to a 10 ans. share of it. Held, that having regard to the provisions of sec. 153 of the Bengal Tenancy Act no appeal lay to the High Court, as the question was not one relating to land or to some interest in land as between parties having conflicting claims thereto, nor was it a question of the amount of rent annually payable by a tenant, these words in the section meaning the total amount of rent annually payable in respect of a holding and not the amount of rent which may be payable to any particular co-sharer in the property. (*Prasanno Kumar Banarji* v. *Srinath Das*, I. L. R., 15 Calc., 231.) When a question of the amount of rent annually payable by the tenant had been decided on the 28th July, 1885, but the amount claimed in the suit did not exceed Rs. 100, it was held that, though the appeal was filed after the passing of the Tenancy Act, no second appeal lay. (*Haro Sundari Debi* v. *Bhajohari Das*, I. L. R., 13 Calc., 86. See note to sec. 2 (4), pp. 5, 6.)

Power of District Judge to set aside orders under the proviso to section 153.—The words "judicial officer as aforesaid," as used in the proviso to sec. 153 of the Bengal Tenancy Act have reference to the "judicial officer" spoken of in cl. (*b*) of that section, and to such officer only, and a District Judge has no power to revise decrees or orders passed by a District Judge, Additional Judge, or Subordinate Judge referred to in cl. (*a*) of the section. (*Sankarmani Debi* v. *Mathura Dhupini*, I. L. R., 15 Calc., 327.)

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commence-

Date from which decree for enhancement takes effect.

ment of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

For the definition of "agricultural year," see sec. 3 (11), p. 16.

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be), fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of

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remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

This section which is based on sec. 14 of the Conveyancing and Law of Property Act, 1881, should be read in connection with secs. 10, 18 (*b*) 25, 44 (*b*), 49, 65, 66, and 89. Under secs. 10 and 18 (*b*) permanent tenure-holders and raiyats holding at fixed rates cannot be ejected on the first of the grounds mentioned in this section. They can only be ejected on the ground of having broken a condition in their lease, the breach of which renders them liable to be ejected. Occupancy and non-occupancy-raiyats may be ejected on both the grounds mentioned in this section (secs. 25 and 44 (*b*)). An under-raiyat, apparently, cannot be ejected on either of the grounds mentioned in this section, as long as he holds under a written lease, or if he holds under a verbal contract for a full year after the service on him of a notice to quit, which may be given to him at his landlord's pleasure (sec. 49). Permanent tenure-holders, raiyats holding at fixed rates, and occupancy-raiyats cannot be ejected merely for arrears of rent (secs. 65 and 66), but there would seem to be nothing to prevent a condition being inserted in their leases, if they have any, or to their contracting with their landlords, that they shall be liable to ejectment for arrears of rent. But no tenant can be ejected save in execution of a decree (sec. 89). Further, all tenants, except under-raiyats and non-occupancy-raiyats, holding under a written and registered lease, the period of which has expired, who have not been allowed to stay on, can save themselves from ejectment under the provisions of this section.

Under the old law, it has been held that a landlord who accepts rent from his tenant after a breach on the part of the latter of a condition in his lease, which gives the former a right of re-entry, must be held to have waived his right of ejectment (*Kali Krishna Tagore* v. *Fazl Ali Chaudhri*, I. L. R., 9 Calc., 843); but his right of re-entry may revive on further breaches of the covenant. (*Duli Chand* v. *Meher Chand Sahu*, 8 W. R., 138; *Chandra Nath Misra* v. *Sirdar Khan*, 18 W. R., 218.)

Even under the old law (secs. 78, Act X of 1859 and 52, Act VIII of 1869, B.C.), a raiyat could always save himself from ejectment by paying in the amount decreed against him within fifteen days' time; for this provision of the old Acts was held not to be confined to suits for ejectment or cancelment of lease on account of the non-payment of rent only, but also to apply to suits for ejectment and cancelment of lease on account of a breach by the raiyat of the conditions of his contract. (*Fitzpatrick* v. *Gowan*, 6 W. R., Act X, 64; *Mahomed Hossein* v. *Budhan Singh*, 7 W. R., 374; *Jan Ali Chaudhri* v. *Nityanand Basu*, 10 W. R., F. B., 12; B. L. R., F. B., 972; *Kamla Sahai* v. *Ram Ratan Neogi*, 11 W. R., 201; *Goklanand* v. *Lalji Sahu*, 21 W. R., 11; *Duli Chand* v. *Meher Chand Sahu*, 12 B. L. R., 439; *Duli Chand* v. *Raj Kishor*, I. L. R., 9 Calc., 88; 11 C. L. R., 326.) Even in cases not governed by the Rent Law, the Courts have in analogy to it granted equitable relief against forfeiture (*Mathura Mohan Pal* v. *Ram Lal Basu*, 4 C. L. R., 469; *Mahomed Amir* v. *Dianat Ali*, 9 C. L. R., 185; I. L. R., 7 Calc., 566); and it was held that the fifteen days' grace allowed to a lessee prior to ejectment could not be negatived by any condition in the lease. (*Madhab Chandra Adit* v. *Ram Kalu*, 16 W. R., 151.) Under the terms of the present section, the landlord must give the tenant a notice of the misuse or breach of which he complains, and a reasonable time to comply with his request to remedy the misuse or breach or pay compensation for the same. It is nowhere laid down what is "a reasonable time" within which a tenant should comply with such a request. It is left to the discre-

tion of the Courts to determine this point with reference to the particular circumstances of each case coming before them. The same remark applies to the time after decree, which the Court may fix for the tenant's paying compensation for the misuse, or remedying the breach of the condition of his lease, and, as under sub-sec. (3), this period may be indefinitely extended, it may be sometimes quite impossible for a landlord ever to eject a tenant even in accordance with the terms of a contract entered into by him.

Service of notice.—The Local Government has directed that a notice under sec. 155 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process-fee prescribed by the High Court under the Court-fees' Act. (See Rule 11, Chap. V, Appendix I.)

Limitation.—The period of limitation for ejecting a tenure-holder or raiyat on account of any breach of a condition in respect of which there is a condition expressly providing that ejectment shall be the penalty of such breach is one year. (Art. 1, Sched. III of this Act.) In other cases the period of limitation will be six years. (Art. 120, Sched. II, Act XV of 1877.)

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage ;

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(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Disposal of away-going crop.—This section provides rules for the disposal of the away-going crop. Under the former law, when a raiyat was ejected, he lost his crop as well as his land. (*Durjan Mahton* v. *Wazid Hossain*, I. L. R., 5 Calc., 135.) This is not the case now. But, in the case of the holding being sold in execution, the crop passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved. (*Afatulla Sirdar* v. *Dwarkanath Moitri*, I. L. R., 4 Calc., 814.) In this case, the raiyat gets the value of the crop in the surplus sale-proceeds.

This section would appear not to apply to under-raiyats.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

Landlords cannot eject trespassers without having recourse to law. When they want to eject them, they must sue them for ejectment or for direct possession of their land. (*Janardan Acharji* v. *Haradhan Acharji*, 9 W. R., 513 ; *Nand Kishor Lal* v. *Sheo Dayal Upadhya*, 11 W. R., 168 ; *Damri Shekh* v. *Bissessar Lal*, 13 W. R., 291 ; *Arjun Datta Bonik* v. *Ram Nath Karmakar*, 21 W. R., 123.) In strict law, trespassers cannot be sued for rent, but are liable for mesne profits or for compensation for use and occupation for the period during which they have occupied the land. (*Kailash Chandra Sirkar* v. *Umanand Rai*, 24 W. R., 412.) In several cases, however, it has been held that the landlord may sue for rent persons who make themselves his tenants by use and occupation of his land. (*Lakhi Kant Das* v. *Samiruddi Lashkar*, 13 B. L. R., 243 ; 21 W. R., 208 ; *Lalan Mani* v. *Sona Mani Debi*, 22 W. R., 334 ; *Swarnomayi* v. *Dinonath Gir Sanyasi*, I. L. R., 9 Calc., 908.) The provisions of this section enable landlords to treat trespassers as tenants at their pleasure. See note, p. 167.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters (namely) :—

Application to determine incidents of tenancy.

XIV of 1882.

(*a*) the situation, quantity and boundaries of the land ;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure ; and

(*d*) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

Suits for interchange of pottahs and kabuliyats done away with.—This section is taken generally from the North-Western Provinces Rent Act (XII of 1881), and is intended to serve as a substitute for the suit for interchange of pottahs and kabuliyats of the former law. The provisions of the former law as to the interchange of pottahs and kabuliyats and suits for obtaining them have been done away with on the recommendation of the Rent Law Commission, who pointed out that very little use was ever made of them, and that they were not well calculated for the settling of essential questions connected with the tenancy which might be in dispute between the parties, regarding, for example, the rate of rent, or the quantity of land held by the tenant. Such matters can now be determined under the provisions of this section. There is nothing now to prohibit the interchange of pottahs and kabuliyats, but they can no longer be sued for.

Collateral Issues.—In a proceeding under this section, it is open to a petitioner, if he acknowledges the opposite party to be a tenant, to dispute the validity of the lease under which he alleges that he is holding, and the Court is bound to go into and decide that question, if raised. (*Bhupendra Narain Datta* v *Nemai Charan Mandal*, I. L. R., 15 Calc., 627.)

Commissions.—By Notification dated the 4th November, 1885, the Local Government has made the following rule under this sub-section. "Under sec. 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act. Whenever, under secs. 31 (*b*) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local inquiry be held under Chap. XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the District may, from time to time, select for the purpose. The Court shall issue a precept to the Collector, requiring him forthwith to nominate a fit person as above to

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conduct the enquiry, and the commission shall be issued to the person so nominated." (*Calcutta Gazette*, November 4th, 1885, p. 988.) For the fees payable on the issue of such Commissions, see note to sec. 31 (*b*), p. 82.

Court-fee duty.—It would appear that applications under this section to determine the incidents of a tenancy should be regarded as miscellaneous cases, and Court-fees on them should be levied accordingly. Thus, the application to the Court of first instance will be subject to a Court-fee duty of 8 ans. except when the application is made to a Civil Court other than a principal Civil Court of original jurisdiction, and the value of the subject-matter of the case is less than Rs. 50, in which case the Court-fee duty leviable will be one anna (Act VII of 1870, Sch. II, Art. 1, cl. (*a*), para. 4, and cl. (*b*), para. 2). But as under sub-sec. (3) the order on an application under this section shall have the effect of a decree, appeals from orders under this section will be liable to a Court-fee duty of Rs. 10 under cl. iii, Art. 17, Sch. II of the Court-fees' Act.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

Patni taluks.—It was at one time proposed to make the provisions of this chapter applicable to patni tenures. But this proposal was ultimately negatived. The provisions of this chapter therefore do not apply to patni tenures, which remain substantially unaffected by this Act. They will still continue to be saleable under the special procedure provided for their sale by Reg. VIII of 1819. Act VIII (B.C.) of 1865 also is not repealed by this Act, so that tenures other than patni taluks held immediately under the zamindar, and upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure, continue saleable after decree, in the same way as patni taluks. The owners of patni taluks and of such saleable under-tenures are, however, not restricted to the procedure prescribed by Reg. VIII of 1819 and Act VIII (B. C.) of 1865. They can, if they please, sue under the provisions of this Act for the rent due to them, and they can then bring the tenure to sale under the provisions of this chapter in execution of their decrees.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances :"

General powers of purchaser as to avoidance of incumbrances. Sec. 16, Act VIII, B. C., 1865; sec. 66, Act VIII, B. C., 1869.

Provided as follows :—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

What passed at a sale for arrears of rent under former law.—A moot point under the old law was what passed at a sale for arrears of rent, whether the tenure or holding itself, or whether only the interest of the judgment-debtor. The result of the rulings would seem to be that when a sharer in a joint undivided estate, dependent taluk or other similar tenure, sold an under-tenure in execution of a decree for arrears of rent due thereon, only the rights and interests of the defaulter passed by the sale; but in other cases in which a tenure or holding was sold for arrears of rent, the tenure or holding itself passed, free from all incumbrances. (*Ramjiban Chaudhri* v. *Piari Lal Mandal*, 4 W. R., Act X, 30; *Mritanjai Chaudhri* v. *Khettra Nath Rai*, 5 W. R., Act X, 71; *Fatima Khatun* v. *Collector of Tipperah*, 13 W. R., 433; *Nando Lal Rai* v. *Guru Charn Basu*, 15 W. R., 6; *Sadhan Chandra Basu* v. *Guru Charn Basu*, 15 W. R., 99; *Daulat Ghazi Chaudhri* v. *Manwar*, 15 W. R., 341; *Ghulam Chandra De* v. *Nadiar Chand Adhikari*, 16 W. R., 1; *Grish Chandra Mitra* v. *Jhaku*, 17 W. R., 352; *Krishna Chandra Ghosh* v. *Raj Krishna Bandopadhya*, I. L. R., 12 Calc., 24; *Mathjan Munshi* v. *Karunamayi Debi*, 8 B. L. R., 1; *Bissessar Lal Sahu* v. *Lachmessar Singh*, 5 C. L. R., 477; L. R., 6 I. A., 233). Even though the sale-proceedings specified that the rights and interests of certain parties were sold, yet the tenure itself was sold and all the co-sharers were jointly liable (*Alimuddin* v. *Sabir Khan*, 8 W. R., 60); and where an under-tenure was sold in execution of a decree, which had been passed in the terms of a compromise effected between the landlord and all the sharers in the tenure but one, and the representative of the latter sought to assert his right to his share against the auction-purchaser, it was held that in a sale under Act VIII of 1869, a tenure is sold outright, and that this tenure did not pass to the auction-purchaser with any incumbrances. (*Grish Chandra Ghosh* v. *Kali Tara*, 25 W. R., 395; *Dular Chand Sahu* v. *Lal Chabil Chand*, L. R., 6 I. A., 47; 3 C. L. R., 561.) Where a widow's interest is sold for arrears of rent, it is not merely the widow's life interest that is transferred, but the property itself, and the reversionary heir cannot follow the estate after her death. (*Tilak Chandra Chakravarti* v. *Madan Mohan Jogi*, 12 W. R., 504.) In another case a judgment-debtor was alone registered in the zamindar's sherishta as owner of a tenure, but his two brothers, who were joint in estate with him, were found to be entitled each to an equal share with him in the tenure. The judgment-debtor was, however, the manager, and he alone was sued for the arrears of rent of the tenure. A sale took place in execution of the decree for arrears of rent, and it was held to have passed the whole tenure, and not merely the interest of the judgment-debtor. (*Jeo Lal Singh* v. *Ganga Prasad*, I. L. R., 10 Calc., 996.) But in *Dwarkanath* v. *Alok Chandra Sil* (I. L. R., 9 Calc., 641), it was held, on a construction of a sale-certificate and a proclamation of sale purporting to be under secs. 59 and 60 of the Rent Act (Bengal Act VIII of 1869), that what passed by the sale was not an under-tenure, but merely the right, title, and interest of the judgment-debtor,—the declaratory portion of a sale-proclamation not being by itself sufficient to override the description of the property in the body of the document.

Fraud.—In certain circumstances a sale has been held not to pass the tenure sold. Thus, in *Nobin Chandra Sen* v. *Nobin Chandra Chakrabartti* (22 W. R., 46), a suit by an auction-purchaser to obtain *khas* possession of an under-tenure

which had been sold under Act VIII (B. C.) of 1869, was dismissed on the ground that the suit in which the zamindar had obtained the decree was a fraudulent one, and the purchaser knew that it had been against the wrong party. In special appeal, the provisions of Act X of 1859, sec. 106, were pleaded in justification of the zamindar; but it was held that he could not bring such a suit against a person other than the one whom he knew to be the proprietor of the under-tenure, and from whom for a series of years he had been receiving rent. The purchaser of an under-tenure may sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent, under Act X of 1859, on the ground that such decree was obtained by fraud subsequent to the purchase. (*Ganga Das Datta* v. *Ram Narain Ghosh*, B. L. R., F. B., 625.) The holder of an under-tenure, though his name has not been registered as the owner, may bring a suit to set aside a sale of the under-tenure, made in execution of a decree for rent against the former owner, on the ground that the money due under the decree had been deposited before the sale. (*Afzal Ali* v. *Gur Narain*, 6 W. R., Act X, 59; B. L. R., F. B., 519.)

A share of a tenure could be sold.—A share of an under-tenure can be sold under sec. 64 of Bengal Act VIII of 1869, so as to render the sale binding upon the judgment-debtor, there being no substantial difference between the sale of a portion of an under-tenure under that section and under the Civil Procedure Code. (*Ahsanullah* v. *Rajendra Chandra Rai*, I. L. R., 12 Calc., 464.) But if a person chooses to purchase part of an under-tenure, he must take his position as being jointly liable for the rent with the other under-tenants (*Gobind Chandra Rai* v. *Ram Chandra Chaudhri*, 22 W. R., 421); and the purchaser of a share of a tenure does not acquire the property with the privileges attaching to the purchase of an entire tenure, *i. e.*, free of incumbrances. (*Reily* v. *Har Chandra Ghosh*, I. L. R., 9 Calc., 722.) It follows, when the tenure itself passes at a sale, that a tenure once sold in execution of a decree for arrears of rent, cannot be re-sold for the arrears of former years. These arrears become the personal debt of the former proprietor of the tenure, and must be recovered from him. (*Latifan* v. *Miah Jan*, 6 W. R., 112; *Pran Gaur Mazumdar* v. *Hemanta Kumari Debi*, I. L. R., 12 Calc., 597.)

A landlord is not bound to proceed against any other than his registered tenant.—A zamindar may bring a suit for arrears only against the tenant whose name is registered in his sherishta, and in execution of a decree obtained in such a suit, the whole tenure may be sold, though others not recognized by the zamindar as his tenants may be interested in the lease. (*Hari Charn Basu* v. *Meharunnissa Bibi*, 7 W. R., 318; *Forbes* v. *Pratap Singh Dugar*, 7 W. R., 409; *Alimudin* v. *Sabir Khan*, 8 W. R., 60; *Bhobo Tarini Dasi* v. *Prasannamayi Dasi*, 10 W. R., 304; *Sadhan Chandra Basu* v. *Guru Charn Basu*, 15 W. R., 99.) A zamindar who has obtained a decree for arrears of rent of a transferable tenure is entitled to sell the tenure, and a person, who has obtained a transfer of such tenure, which he has not registered, and cannot show a sufficient cause for not registering, is bound by the sale, and cannot set up a title, which he has acquired by a previous sale. (*Sham Chand Kundu* v. *Braja Nath Pal*, 21 W. R., 94; 12 B. L. R., F. B., 484.) A decree for rent obtained by a landlord against his registered tenant renders the tenure comprised in the decree liable for sale, although such tenure may have passed into other hands than those of the judgment-debtor. The landlord's remedy is, however, in such a case strictly confined to the sale of such tenure under his decree. He cannot make a tenant personally liable for rent which accrued due before such tenant became the owner of the tenure. The

remedies which are provided by the rent law for enforcing the payment of the rent by sale of the tenure or by distress are remedies *in rem*. The personal liability of one tenant cannot be transferred to another. (*Rash Bihari Bandopadhya* v. *Piari Mohan Mukharji*, I. L. R., 4 Calc., 346.) The plaintiff purchased under a private conveyance from the registered tenant of a permanent transferable interest in land such as is described in sec. 26 of Bengal Act VIII of 1869, but no notice of the transfer was given to the zamindar. The zamindar subsequently brought a suit against the tenant for arrears of rent, and obtained a decree, in execution of which he caused the tenure to be sold, and himself became the purchaser. The plaintiff took proceedings under sec. 311 of the Civil Procedure Code to set aside the sale; but his application was rejected on the ground—an erroneous one—that he was not a proper party to take such proceedings, and he did not appeal against the order rejecting it. It was held that a suit brought against the zamindar and the tenant to set aside the sale was in the absence of fraud not maintainable. The plaintiff might have satisfied the rent decree and so prevented the sale, or he might have appealed against the order rejecting his application to set it aside; but having done neither, and the zamindar having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent-suit as a nullity, on the ground that he was not a party to the suit. (*Panye Chandra Sirkar* v. *Har Chandra Chaudhri*, I. L. R., 10 Calc., 496.) But if a landlord has recognised the transferee of the tenancy as his tenant, he cannot sell the tenancy for arrears due from the recorded tenant. (*Amrita Lal Basu* v. *Saurabi Dasi*, 2 W. R., Act X., 86; *Mich Jan Munshi* v. *Karuna Mayi Debi*, 8 B. L. R., 1; *Mojon Mollah* v. *Dula Ghazi Kulan*, 12 B. L. R., 492, note; *Ram Kishor Acharji* v. *Krishna Mani Debi*, 23 W. R., 106.) Under the present Act, the transfer of a permanent tenure, or of the interest of a raiyat holding at fixed rates can only be made by registered instrument. A landlord is not bound to recognize such a transfer until steps have been taken to notify it to him. He would also be justified in proceeding against the recorded tenant in the case of an occupancy-raiyat, unless the latter had a transferable interest, and had given him notice of the transfer under sec. 73 of this Act. But if he himself brings the tenure or holding to sale in execution of a decree for arrears of rent, he, of course, cannot refuse to recognize the purchaser as his tenant. No landlord's fee is payable on such a transfer of a tenure (sec. 14) as in the case of other transfers of tenures.

What passes now at a sale for arrears under decree.—It seems clear that at a sale of a tenure or holding for arrears of rent the tenure or holding itself now passes (and not merely the interest of the judgment-debtor), subject of course to the "protected interests," and with power to annul incumbrances. As sec. 64, Act VIII of 1869, B. C., which provided that a saleable under-tenure could not be sold in execution of a decree obtained by a co-sharer for his share of the rent until the debtor's moveable property within the jurisdiction of the Court had been seized and sold, has not been reproduced in this Act, it would seem that the tenure or holding will pass, even if it is sold in execution of a decree for arrears of rent obtained by a co-sharer. Section 65, which says that the rent shall be a first charge on a tenure or holding makes no distinction between the rent due to a co-sharer and the rent due to a sole landlord or the whole body of landlords if there be more than one. Section 159, too, is silent on this point.

A sale is valid, even if the decree under which it was held is reversed.—If a sale takes place in execution of a decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser. If the

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decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale, or the title of the purchaser. (*Chandra Kant Sarmah* v. *Bissessar Sarmah*, 7 W. R., 312.) A *bonâ fide* sale under a decree is binding, notwithstanding that the decree may be set aside upon review. (*Jan Ali* v. *Jan Ali Chaudhri*, 10 W. R., 151; 1 B. L. R., 56; *Piari Moni Dasi* v. *The Collector of Birbhum*, 8 W. R., 300.) No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. (*Durga Prasad Pal* v. *Jogesh Prakash Gangopadhya*, 4 W. R., Act X, 38.) But a sale in execution of a decree barred by limitation is invalid (*Ghulam Asgar* v. *Lakhimani Debi*, 5 B. L. R., 68; 13 W. R., 273), and a sale held under a decree passed by a Court without jurisdiction and reversed on that account is a nullity. (*Jadu Nath Kundu* v. *Braja Nath Kundu*, 6 B. L. R., App., 90; see also *Bhulu* v. *Ram Narain Mukharji*, W. R., Sp. No., 129.)

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter :—

(*a*) any under-tenure existing from the time of the Permanent Settlement ;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;

(*d*) any right of occupancy ;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

The interests referred to in cls. (*a*), (*b*), and (*c*) are protected under a sale for arrears of revenue. They are, therefore, *a fortiori* entitled to protection under a sale for rent. The interests referred to in cls. (*d*), (*f*), and (*g*) were protected under sales for rent under the former law (sec. 16, Act VIII, B. C., of 1865 ; sec.

66, Act VIII, B. C., of 1869; and *Nilmadhab Karmokar* v. *Shibu Pal*, 13 W. R., 410.) The interest referred to in cl. (*e*) has been created by this Act.

The interests referred to in cl. (*c*) are protected, subject to the proviso laid down in cl. (4), sec. 167, that if a purchaser has power, under this chapter, to annul all incumbrances (sec. 165), he may sue to enhance the rent of the land, which is the subject of the protected interest, unless it has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land. The benefit of the fourth exception to sec. 37, Act XI of 1859 (which applies to the interests specified in cl. (*c*) of this section), must be limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue-sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier (*Azgar Ali* v. *Asmat Ali*, I. L. R., 8 Calc., 110.) But a landlord cannot by planting a garden in any portion of his estate, become, *quoad* such plantation, his own raiyat, so as to bring the land so planted within the protection of Act XI of 1859, sec. 37, in the event of his estate being sold for arrears of revenue. (*Bul Chand Jha* v. *Lathu Mudi*, 23 W. R., 387.)

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

Incumbrances may be (1) registered and notified; (2) registered and unnotified; and (3) unregistered and unnotified. A purchaser at a sale under sec. 165 can annul incumbrances of all these three classes. A purchaser at a sale under sec. 164 can annul incumbrances of the second and third classes only. The provision for the registration of these incumbrances has been made with the view of preventing sham incumbrances being set up after the sale of the tenure or holding.

Service of copy of incumbrance.—The copy of the incumbrance will be served on the landlord in the manner prescribed by the Local Government, by Rule 3, Chap. I of the Rules given in Appendix I.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

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Particulars to be specified in applications for execution.—Section 235 of the Code of Civil Procedure provides that an application for execution shall be in writing and verified, and shall contain, in a tabular form, (*a*) the number of the suit ; (*b*) the names of the parties ; (*c*) the date of the decree ; (*d*) whether any appeal has been preferred ; (*e*) whether any and what adjustment of the matter in dispute has been made subsequently to the decree ; (*f*) whether any and what previous applications have been made for execution of the decree, and with what result ; (*g*) the amount, with the interest, if any, due upon the decree, or other relief granted thereby ; (*h*) the amount of costs, if any, awarded ; (*i*) the name of the person against whom execution is sought ; and (*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise. Rule 9 of the High Court's revised rules under sec. 287 of the Civil Procedure Code is as follows :—"Every person applying under sec. 162 of the Bengal Tenancy Act (VIII of 1885) for the simultaneous attachment, and sale of a tenure or a holding of a raiyat holding at fixed rates, or applying only for the sale of such tenure or holding already under attachment, shall in such application specify the registered and notified incumbrances subject to which the tenure or holding is to be sold. Such specification shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints by the holder of the decree, in execution of which the tenure or holding is to be sold, or by some other person (approved of by the Court), if the Court be satisfied that he is acquainted with the facts mentioned in it." (*Calcutta Gazette* of August 18th, 1886, Part I, p. 939.)

Order of attachment and proclamation of sale to be issued simultaneously.

* XIV of 1882.

Sec. 105, Act X, 1859 ; sec. 4, Act VIII, B. C., 1865 ; sec. 59, Act VIII, B. C., 1869.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure,* when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances ; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

The particulars mentioned in sec. 287 of the Code of Civil Procedure are : (*a*) the property to be sold ; (*b*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate, or part of an estate, paying revenue to Government ; (*c*) any incumbrance to which the property is liable ; (*d*) the amount for the recovery of which the sale is ordered ; and (*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

The following notification dated the 20th February, 1886, has been issued by the Local Government :—"Under sec. 163 (3), Bengal Tenancy Act, the Lieutenant-Governor is pleased to direct that the proclamation referred to in that section as required by sec. 287 of the Civil Procedure Code, Act XIV of 1882, shall, in addition to the places prescribed in sec. 163 (3) of the Bengal Tenancy Act, and in sec. 289 of the Code of Civil Procedure be also published in the *mal kachari*, or rent office of the estate, and at the local thana." (*Calcutta Gazette*, March 3rd, 1886, Part I, p. 142.)

Section 163, sub-section (4).—In an unreported case (*Krishna Prasanna Mitra* v. *Ram Pratab Agarwala*, decided by Petheram, C. J., and Ghose, J., on May 30th,

1887, a sale was set aside on the ground that 30 days had not elapsed between the date of the proclamation and the date of the sale. In this case it was said "whether the sale was governed by sec. 163 of the Bengal Tenancy Act or by sec. 290 of the Code of Civil Procedure, a period of 30 days must elapse between the date of the proclamation and the date of the sale, and in our opinion, if property is sold within that period, the defect is not a mere irregularity, such as is contemplated by sec. 311 of the Code of Civil Procedure, *viz.*, an irregularity relating to the publishing or the conducting of the sale : it is one of the conditions precedent to a valid sale that this time should elapse between the proclamation and the date of the sale, and if that condition is not complied with, the sale is not merely an irregular sale, but no sale at all."

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Meaning of bidding.—In an unreported case (*Nobo Kamar Mukharji* v. *Kissori Dasi*, decided by Petheram, C. J., and Ghose, J., on the 30th May, 1887), it was said, "the question is whether a 'bidding,' as the expression is used in sec. 164 of the Bengal Tenancy Act, includes a bidding, which is withdrawn before acceptance. In our opinion bidding in that section means a bid, which has either been accepted, or which is open to acceptance, and does not include a bid, which has been withdrawn before acceptance, and which has thus been cancelled by the bidder."

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.
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165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to

avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances and effect thereof.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances under the foregoing sections.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance

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the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

The provisions of this section are in accordance with the general rule that the effect of a sale is not *ipso facto* to annul and avoid incumbrances, but to render them voidable at the option of the purchaser. "The same principle," it has been said, "applies to sales for arrears of rent as to sales for arrears of revenue, and both are only voidable at the option of the purchaser." (*Titu Bibi* v. *Mohesh Chandra Bagchi*, I. L. R., 9 Calc., 683; 12 C. L. R., 304.) Under the present law, a purchaser can annul an incumbrance only by giving notice to the incumbrancer through the Collector. From the case of *Titu Bibi* v. *Mohesh Chandra Bagchi*, it would seem that under the old law it was not necessary that the purchaser should give any notice or do any act before bringing a suit to cancel the incumbrance.

For the mode of service of the notice of the incumbrance, under sub-sec. (3) see Rule (3), Chap. I, of the Government Rules under the Act. No form of notice has been prescribed. The notice should be prepared by the notice-giver. The Board of Revenue have directed that fees for the service of the notice are to be levied in accordance with Rules 1 to 4, Chapter VII, of the Government Rules under this Act. (Board of Revenue's No. 709A of November 2nd, 1886, to the Commissioner of the Presidency Division, and No. 338A of May 10th, 1888, to the Commissioner of Burdwan.)

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

The Local Government has not exercised the power of directing that occupancy-rights shall be sold subject to incumbrances in any local area.

Rules for disposal of the sale-proceeds. XIV of 1882.*

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure,* shall be observed, that is to say :—

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale ;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

A suit for a share of the proceeds of the sale of a tenure sold in execution of a decree for arrears of rent is not cognizable by a Small Cause Court. (*Ram Kumar Sen* v. *Ram Kamal Sen*, I. L. R., 10 Calc., 388.)

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder. * XIV of 1882.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure* shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or

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holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Sections 278 to 283 of the Civil Procedure Code deal with claims to attached property and their disposal. Hence, no claims to tenures or holdings attached in execution of decrees under the Bengal Tenancy Act can now be enquired into. It would seem, however, that such claims, if made in the course of the execution of a decree under Act VIII of 1869, B. C., should still be enquired into (see note to sec. 2 (4), p. 5).

But in *Jagabandhu Chattopadhya* v. *Dinu Pal* (decided by Petheram, C. J., and Cunningham, J., on the 7th January, 1887), it has been said that the operation of sec. 170 "is confined to claims to the tenure, and not to claims which are adverse to the tenure, and in which the nature of the question to be tried is whether the property claimed is part of the tenure or not. The claimant in this case claims no interest whatever in the tenure. He is not claiming to be the tenant of the plaintiff. He only says, 'the property you have attached as a portion of the tenure is not a portion of it. That is a property which I hold under a distinct title.' Under these circumstances, we think the case does not come within sec. 170 of the Rent Act, and, therefore, the ordinary jurisdiction of the Munsif, under sec. 278 of the Code of Civil Procedure, was not set aside, and that he had a right to entertain this matter."

Right of an unregistered transferee of a tenure or holding to pay the decretal amount into Court - When an under-tenure has been transferred, but the transfer is not registered in the serishta of the zamindar or superior tenant, the transferee is, nevertheless, entitled as a person interested in the protection of the tenure to stop its sale in execution of a decree under Act VIII (B. C.) of 1865, by paying into Court the amount of the decree. (*Anand Lal Mukharji* v. *Kalika Prasad Misra*, 20 W. R., 59.) Under the present Act, the transferee of a tenure or holding at a fixed rate under an unregistered deed, has probably no right to pay the decretal amount into Court, as he holds no valid incumbrance over it. It is also doubtful whether the unrecognized transferee of an occupancy-holding will have such a right, for his interest is a protected interest (160 *d*), and therefore not voidable by the sale. Any person paying the decretal amount into Court, preserves the tenure or holding and his interest under it. Under the provisions of sec. 171, he acquires a mortgage right on it, and is entitled to be put in possession, until the amount of his payment with interest at 12 per cent. is repaid to him. If the sale takes place, the unrecognized transferee is bound by it and cannot set up against the purchaser his title acquired at any previous private sale to him. (*Sham Chand Kundu* v. *Brajanath Pal*, 21 W. R., 94; see also note to sec. 159.)

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

Sec. 6, Act VIII, B. C. of 1865; sec. 62, Act VIII, B. C. of 1869.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum, and secured by a mortgage of the tenure or holding to him ;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

This section extends to tenures and holdings generally the provisions of sec. 13, Reg. VIII of 1819, with regard to the staying of *patni* sales and the recovery of sums paid into Court for the purpose. The person put in possession of the tenure or holding must pay the rent due to the superior landlord. (*Kanai Lal Set* v. *Nistarini Dasi*, I. L. R., 10 Calc., 443.) The defaulter is not liable for the rent, while the quasi-mortgagee is in possession. (*Bhairab Chandra Kapur* v. *Lalit Mohan Singh*, I. L. R., 12 Calc., 185.)

Remedies of persons whose interests are affected by sale.—An unregistered assignee of a *darpatni* taluk can recover by regular suit a deposit made by him to save his interest in the taluk. (*Lakhi Narain Mitra* v. *Khettro Pal Singh*, 13 B. L. R., 146.) An under-tenant, who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. (*Ambika Debi* v. *Pranhari Das*, 4 B. L. R., 77.) A *darpatnidar* can also deduct the sum paid by him to save the *patni* from sale from the amount of rent due by him to the *patnidar*. (*Nobogopal Sirkar* v. *Srinath Bandopadya*, I. L. R., 8 Calc., 877 ; 11 C. L. R., 37). He may similarly deduct from the rent any sum which he may have paid, not into Court, but direct to the zamindar, in order to stay the sale of the *patni*. (*Tarini Debi* v. *Shama Charan Mitra*, I. L. R., 8 Calc., 954; but see *contra*, *Mahomed Hossein Ali* v. *Bakaulla*, 6 W. R., 84.) A suit by an unregistered holder will lie in a Civil Court to set aside the sale of a tenure sold in execution of a decree for rent under Act X of 1859 after the money due upon the decree was deposited, sec. 151 of that Act notwithstanding. (*Afzal Ali* v. *Gurnarain*, 6 W. R., Act X, 59 ; B. L. R., F. B., 519.) When a tenure liable to sale is the subject of a suit, if the party in possession of such tenure neglects to pay the rent due to the proprietor of the tenure and such tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such tenure may upon payment of the rent due previously to the sale (and with or without security at the discretion of the Court) be put in immediate possession of the tenure ; and the Court in its decree may award against the defaulter the amount so paid with interest thereupon at such rate as the Court thinks fit or may charge the amount so paid, with interest thereupon at such rate as the Court

orders in any adjustment of accounts which may be directed in the decree passed in the suit (sec. 501, C. P. C.).

Inferior tenant paying into Court may deduct from rent.
Sec. 2, Act VIII, B. C., 1865; sec 62, Act VIII, B. C., 1869.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.
* XIV of 1882.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure,* the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

In consequence of the provisions of sub-sec. (2), a judgment-debtor, bidding or purchasing a tenure or holding at a sale under this chapter, will render himself liable to the penalty provided in sec. 185, Indian Penal Code.

Application by judgment-debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to

the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside :

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

The effect of sub-sec. (1) is that if the judgment-debtor can, within thirty days of the sale, raise the money, he can have the sale set aside, notwithstanding that there has been no irregularity in publishing or conducting it. Section 315, Act XIV of 1882, provides for the return of the purchase-money (with or without interest, as the Court may direct) on the setting aside of a sale. The order for the repayment of the purchase-money with interest (if any is allowed) may be enforced as a decree. Section 311 provides for the setting aside of a sale on the ground of irregularity in publishing or conducting it, provided the applicant can prove that he has sustained substantial injury by reason of the irregularity. Under the former law sales of under-tenures under the rent law could be set aside on this ground (*Azizannissa Khatun* v. *Gora Chand Das*, I. L. R., 7 Calc., 163 ; 8 C. L. R., 498). Section 313 deals with applications to set aside sales on the ground of the judgment-debtors having no saleable interest in the property sold. Sales of tenures or holdings cannot be set aside on this ground, as "the rent is a first charge" upon them (sec. 65), and they are liable to be sold for arrears of rent due in respect of them, no matter in whose hands they may be at the time of their sale.

"Judgment-debtor."—The word "judgment-debtor," as used in this section, does not include a transferee or assignee from a judgment-debtor ; but must be construed strictly as referring to a judgment-debtor alone. (*Rajendro Narain Rai* v. *Phudi Mandal*, I. L R., 15 Calc., 482.)

A judgment-debtor can have a sale set aside even when only his rights and interests are sold.—In an unreported case (Rule No. 269 of 1888, decided by Petheram, C. J., and Tottenham, J., on the 30th April, 1888), it was held that a judgment-debtor can apply under this section for the setting aside of a sale, even when the sale has taken place in execution of a decree for arrears of rent obtained against him by a co-sharer landlord, in which case under the old law only the rights and interests of the judgment-debtor are sold, and not the tenure or holding itself. (See note to sec. 159, p. 233.)

A deposit under this section must be one at once payable to the parties.—The deposit under sec. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its

provisions. A deposit made in the shape of Government Promissory notes is not good. The deposit should be made in the currency of the country. (*Rohim Baksh* v. *Nando Lal Gossami*, I. L. R., 14 Calc., 321.)

This section creates a new right which cannot have retrospective effect.—As the provisions of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect, a judgment-debtor's right under sec. 174 of the Bengal Tenancy Act to set aside a sale does not avail when the sale has been held in pursuance of a decree, the execution whereof had been applied for before that Act came into operation. (*Lal Mohan Mukharyi* v. *Jogendra Chandra Rai*, I. L. R., 14 Calc., 636.) A sale in execution of a decree passed under Bengal Act VIII of 1869, execution having been applied for after Act VIII of 1885 had come into force, cannot be set aside under sec. 174 of the latter Act. (*Uzir Ali* v. *Ram Kamal Shaha*, I. L. R., 15 Calc., 383.)

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877,* an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

* III of 1877.

Part IV of the Registration Act deals with "the time of presentation." The extended period for registering instruments creating incumbrances allowed by this section of course expired on the 31st October, 1886.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

See the rules framed by the Registration Department under the Bengal Tenancy Act, Appendix IV.

The process-fees for the service on the landlord of the copy of the incumbrance will be levied in accordance with Rules 1 to 4, Chap. VII of the Government Rules under the Tenancy Act. The copy of the incumbrance should be served on the landlord under Rule 3, Chap. I of these rules.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land ;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23 ;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86 ;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage ;

(*e*) take away the right of an occupancy-raiyat to sublet subject to, and in accordance with, the provisions of this Act ;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52 ;

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(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent :

Provided as follows :—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat ;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

The provisions of this section place very considerable restrictions on the freedom of contract between landlord and tenant, but only such restrictions as, in the opinion of the framers of this Act, are essential to the well-being of the peasantry in Bengal.

Contracts barring the acquisition of occupancy-rights.—Reading sub-sec. (1) (a), sub-sec (2), and sub-section (3) (a) together, it would seem as if it were intended that a raiyat should be able, in a contract made before the passing of this Act, to bar his acquisition of an occupancy-right in land for a limited period, but not for ever. After the 15th July, 1880, however, he cannot enter into any contract, the effect of which will be to suspend his acquisition of this right even for a time.

Sub-section (1) (b).—In a case decided under the provisions of this clause (*Mohcshwar Prasad Narain Singh* v. *Sheobaran Mahto*, I. L. R., 14 Calc., 621), in which a landlord sued to eject a tenant who had executed a *solehnamah*, agreeing to hold the land in suit for a specified period at a specified rent and providing that the landlord was to be at liberty to enter on the lands at the expiry of the period, and the suit was instituted on the 6th October, 1885, and when it was found that at the date of the *solehnamah*, the tenant had acquired a right of occupancy with respect to some of the lands in the suit, it was held that the

tenant was not entitled to the benefits conferred by sec. 178, sub-sec. (1), cl. (*b*), but was liable to be ejected. In this case the Court (Tottenham and Norris, J. J.) said :—"We think that in this suit which commenced before the new Tenancy Act came into force, the tenant cannot get the benefit of sec. 178. We think that the point to be looked at was, what was the right of the tenant at the time the suit was brought. At the time the suit was brought there was nothing to prevent his contracting himself out of his rights."

Sub-section (1), clause (o).—The meaning of this clause would seem to be that no tenant can contract himself out of the provisions of sec. 89, which provide that no tenant shall be ejected from his tenure or holding except in execution of a decree.

Sub-section (2).—The 15th July, 1880, mentioned in sub-sec. (2), is the date of the Government orders directing the publication of the Rent Law Commission's Report and Draft Bill. The date of the passing of the Act is the 14th March, 1885.

Reclamation leases.—The effect of provisoes (i) and (ii) is to leave reclamation leases wholly to contract, except that they do not ordinarily bar the acquisition of an occupancy-right which may have grown up during the lease. But in cases in which waste land has been reclaimed by the landlord himself, no occupancy-rights can be acquired in it for the first thirty years after the letting of it to raiyats, if a stipulation to that effect is made in the contract. Under the former law, it was held that when, on such leases, a reduced rent is charged for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not liable to enhancement. (*Haro Prasad Rai* v. *Chandi Charn Bairagi*, I. L. R., 9 Calc., 505 ; 12 C. L. R., 251 ; *Surasundari Debi* v. *Ghulam Ali*, 15 B. L. R., 125, note ; 19 W. R., 142.)

Permanent mukarrari leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Proprietors have long had this right. It is now expressly extended to the holders of permanent tenures.

Utbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

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until he has held the land in question for twelve continuous years ; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Utbandi tenancies.—An *útbandi* tenancy, also sometimes called a *nuksan jote*, is a tenancy from year to year, and sometimes from season to season, the rent being regulated according to the area under cultivation, by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenancy by crop appraisement of the *bhaoli* system ; but there is between them this marked difference that, while in the latter the land does not change hands from year to year, in the former it may. (Government of Bengal letter, dated 15th Septembr, 1884, to the Government of India.) The rent of an *útbandi* tenancy is always a money rent. The *útbandi* system prevails in the district of Nuddea. In the case of *Mirjan Biswas* v. *Hills* (3 W. R., Act X, 159), it is said:—"There exists in the district of Kishnagur a custom, under which tenants can cultivate land, which is not directly let out to other tenants, but remains *khas khámár* on payment of certain high rates of rent. In the case of such tenants, there exists an implied agreement between the parties, that such rent shall be paid ; and the amount of land so cultivated, and the rent to be paid for it are ascertained each year by actual measurement. The lands in question are called *útbandi* lands, and the rates are calculated at what are called *útbandi* rates." Again, in *Dwarka Nath Misra* v. *Nobo Sirdar* (14 W. R., 193), Jackson, J., observed—"Some little confusion appears to me to have been introduced into the case by the use of the term *útbandi*. So far as my experience and knowledge of the matter go, an *útbandi* tenure is one by which a raiyat holds a certain area of land (which I believe is usually defined), but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent will, therefore, vary according to the actual cultivated area ; but I am not aware that there is any authority for saying that a landlord is at liberty to vary at his pleasure the rate at which a tenant holding an *útbandi* tenure pays for the land which he cultivates, due notice being served on him under sec. 13, Act X of 1859." (See also *Kenny* v. *Issar Chandra Poddar*, W. R., Sp. No., Act X, 9.) Occupancy-rights could always be acquired in *útbandi* lands. (*Premanand Ghosh* v. *Surendro Nath Rai*, 20 W. R., 329), and may now be acquired in them, as well as in *chur* (alluvial) and *dearah* lands, but the Act makes this difference between the tenants of *útbandi* and *chur* and *dearah* lands and the tenants of ordinary lands, that the raiyats of the former class of lands must hold the same lands for twelve years before acquiring occupancy-rights in them, while the raiyats of ordinary lands acquire occupancy-

rights in all the land they hold in a village, if they have held any land for twelve years in that village. This section further lays down that, until the tenant of *ûtbandi* and of *chur* or *deurah* lands has acquired a right of occupancy, he shall be liable to pay such rent for his holding as may be agreed upon between him and his landlord, and that Chap. VI, which relates to non-occupancy-raiyats, shall not apply to him. The result of these provisions is, that, for the first twelve years of his holding, such a tenant is neither a "settled" nor a non-occupancy-raiyat. His position is exactly that of a tenant-at-will under the old law, except that he cannot now be ejected otherwise than in execution of a decree (sec. 89), or in other words, except after a suit. An *ûtbandi* raiyat may also, if such be the local custom, have a right to cultivate certain lands in the village without previously obtaining the express consent of the landlord, on the implied understanding that he will pay the customary rate of rent.

Halhasili and other special tenancies.—It was at one time proposed to make special provisions with regard to *halhasili* tenancies, which, like tenancies under the *ûtbandi* system, are tenancies from year to year, but in which the rent varies, sometimes according to the area of land cultivated, and sometimes according to the crop raised each year. But as such tenancies were found to be in a transition stage, and well advanced towards the status of ordinary *raiyati* holdings, from which they were not always distinguishable, it was determined to make no special rules with regard to them, but to let the ordinary provisions of the Act apply to them. No special provisions have been made with regard to *Guzasta* and *Gorabandi* tenancies. (See notes to sec. 18, pp. 56, 57.)

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a ghatwali or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Ghatwali tenures.—*Ghatwali* tenures may be divided into two classes, *viz.*, (1) *ghatwali* tenures, properly so called, consisting of grants of jungly and hilly tracts of land, made originally by the Moghal Government on condition of militia and police service. The holders of such tenures are talukdars: (2) The *ghatwali* Police tenures. These consist of small grants of land originally made by the zamindars on condition of police service in guarding roads and passes. The Kharakpore tenures in Monghyr and the Birbhum *ghatwali* tenures are instances of the first class. There is this distinction between them that the Kharakpore *ghatwals* are appointed by the zamindars and the Birbhum *ghatwals* by Government. (*Anando Rai* v. *Kali Prasad Singh*, I. L. R., 10 Calc., 684.) The *ghatwals* of Kharakpore have been said to hold perpetual and hereditary tenures at fixed rents, payable in money and service, and cannot be evicted by the zamindar except for misconduct. (*Manoranjan Singh* v. *Lilanand Singh*, 3 W. R., 84.) They are perpetual holdings subject to the condition of service. (*Manoranjan Singh* v. *Lilanand Singh*, 5 W. R., 101.) The lands of such tenures are not liable to resumption and re-assessment under Reg. I of 1793. (*Lilanand Singh* v. *Government of Bengal*, 4 W. R., P. C., 77; 6 Moo. I. A., 101.) But in the absence of express words to the contrary, *ghatwali* lands held under a lease which neither confirms nor recognizes the pre-existing status of the *ghatwals*, nor confers on them any right other than that

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of holding lands at a fixed rate as long as *ghatwali* service is required from them, are resumable by the zamindar when that service is no longer required. (*Lilanand Singh* v. *Sarwan Singh*, 5 W. R., 292.) When the appointment to the vacant office of *ghatwal* rests with the zamindar, he may, if necessary, appoint a suitable person ; but when Government no longer requires the service of *ghatwals*, there is no longer any necessity for his doing so. (*Mahbub Hossain* v. *Patasu Kumari*, 10 W. R., 179 ; 1 B. L. R., A. C., 120.) Kharakpore *ghatwali* tenures cannot be alienated by private sale or otherwise, nor are they liable to sale in execution of decrees, except with the consent of the zamindar, and his approval of the purchaser as a substitute for the outgoing *ghatwal* (*Lilanand Singh* v. *Durgabati*, W. R., Sp. No., 249) ; while with the consent of, and approval of the purchaser by, the zamindar, a sale in execution is good. (*Ghuman Singh* v. *Grant*, 11 W. R., 292.) The zamindar's assent to, and acceptance of, the transfer may be presumed from the fact of the zamindar having made no objections to a transfer for a period of over twelve years, and when such a fact has been found, a Court ought to recognize such a transfer. (*Anando Rai* v. *Kali Prasad Singh* I. L. R., 10 Calc., 677.) As long as the *ghatwals* are able and willing to perform the services required of them by their sanads, the zamindar cannot put an end to their tenures (*Lilanand Singh* v. *Manoranjan Singh*, 13 B. L. R., P. C., 124), nor enhance their rents on the ground that their services are no longer required. (*Lilanand Singh* v. *Manoranjan Singh*, I. L. R., 3 Calc., 251.) The Birbhum *ghatwali* tenures are dealt with in Reg. XXIX of 1814 and act V of 1859. They were grants of lands in Tappah Sarath Deoghar, which was formerly part of the Birbhum district, but which has now been included in the Santal Parganas. With regard to these, it has been said, that they are estates of inheritance without the power of alienation, and enduring so long as the *ghatwals* perform all the obligations of service and payment of rent to Government incident to their tenure. (*Deputy Commissioner of Birbhum* v. *Rango Lal Deo*, W. R., F. B., 34 ; Marsh., 117.) The succession to a *ghatwal* is regulated by no rule of *kulachar*, or family custom, nor by the Mitakshara law, but solely by the nature of the *ghatwali* tenure, which descends undivided to the party who succeeds to, and holds the tenure as, *ghatwal*. A female is not incapable of holding a *ghatwali* tenure. (*Kastura Kumari* v. *Manohar Deo*, W. R., Sp. No., 39.) The rents of such a tenure are not liable to the debts of the former deceased holder. (*Binod Ram Sen* v. *Deputy Commissioner of Santal Parganas*, 6 W. R., 129 ; 7 W. R., 178.) *Ghatwali* tenures are not liable either to sale or attachment in execution of decrees. The surplus proceeds of such a tenure, collected during the lifetime of the judgment-debtor, are liable to be taken in execution as being personal property, but not so profits accumulated after the judgment-debtor's death. (*Kastura Kunwari* v. *Binod Ram Sen*, 4 W. R., Misc., 5.) When a *ghatwal* becomes a defaulter it is in the power of the authorities under Reg. XXIX of 1814 to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person. (*Chittro Narain Singh* v. *Assistant Commissioner of Santal Parganas*, 14 W. R., 203.) A *ghatwal* is not competent to grant a lease in perpetuity, and his successors are not bound to recognize such an incumbrance. (*Grant* v. *Bangshi Deo*, 15 W. R., 38 ; 6 B. L. R., 652.) As to *ghatwali* tenures of the first class in general, it has been said in *Anando Rai* v. *Kali Prasad Singh* (I. L. R., 10 Calc., 677,) that in dealing with a *ghatwali* tenure, the Court must have regard to the nature of the tenure itself and to the rules of law laid down in regard to such tenures and not to any particular school of law, or the customs of any particular family, and that a *ghatwali* being created for a specific purpose has its own particular incidents, and can-

not be subject to any system of law affecting only a particular class or family. Government cannot sue to obtain possession of *ghatwali* lands admittedly included in a decennially settled estate. (*Gadadhar Banarji* v. *Government*, 6 W. R., 326.) When a *ghatwali* tenure has been granted by Government, the zamindar cannot, of his own motion, without the assent and against the will of Government, put an end to the *ghatwali*, and treat the *ghatwals* as trespassers. (*Kulodip Narain Singh* v. *Mahadeo Singh*, 6 W. R., 199 ; B. L. R., F. B., 559 ; 11 B. L. R., P. C., 71 ; 14 Moo. I. A., 247.) When it is admitted that a *ghatwali* tenure has existed from a time anterior to the Decennial Settlement, and before the creation of the zamindari, the *ghatwal* is protected under Act X of 1859 from any fresh assessment. (*Erskine* v. *Government*, 8 W. R., 232 ; *Forbes* v. *Mahomed Taki*, 14 W. R., P. C., 28.) Long possession (presumably from the Decennial Settlement) and gradual cultivation by a *ghatwal* on payment of a quit-rent (and not merely possession without cultivation) are evidence of an implied grant which protects the *ghatwal* from enhancement or assessment on the land so cultivated. (*Erskine* v. *Manik Singh*, 6 W. R., 10). But a suit will lie to assess lands occupied by *ghatwals* in excess of the area recorded in their *ismnavisi*. (*Jago Jewan Lal* v. *Roghunath Kopat*, 6 W. R., 197.) When *ghatwals* hold land not under a *sanad* conveying a hereditary indefeasible right, but on payment of a quit-rent with enjoyment of the profits of the land in lieu of wages, such possession, however long, will not entitle them to hold the land at a fixed *jama*, or to retain a portion of the land after they have ceased to perform the duties for which the land was assigned to them. (*Lilanand Singh* v. *Nasib Singh*, 6 W. R., 80.) On the demise of a *ghatwal*, a Commissioner of Revenue cannot interfere and consider the eligibility of rival claimants to the tenure (a perpetual and descendible one). (*Lal Dhari Rai* v. *Brajo Lal Singh*, 10 W. R., 401.) In one case it has been said that it is impossible for a right to reinstate a *ghatwal* to exist in the Government or in any person or body whatsoever. (*Anand Kumari* v. *Government*, 11 W. R., 180.) A *ghatwali* estate is not necessarily held by males to the exclusion of females. (*Durga Prasad Singh* v. *Durga Koeri*, 20 W. R., 154.) Where a *jagir* is held by a person subject either to the appointment or approval of Government, and with an additional burden of public duty to the Government, such a *jagir* cannot be attached and sold in satisfaction of the *jagirdar's* predecessor in title, as lands coming into his possession from the hands of the deceased *jagirdar*, as the appointment and approval of Government deprive the *jagir* of the character of simple heritable property. (*Bakro Nath Singh* v. *Nilmani Singh*, I. L. R., 5 Calc., 389 ; 4 C. L. R., 583 ; I. L. R., 9 Calc., 187.) A *shikmi ghatwali* tenure held under the superior *ghatwal*, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder. (*Balli Dhobi* v. *Gonai Deo*, I. L. R., 9 Calc., 388.) A *ghatwal* cannot give a pottah of his tenure binding on a subsequent *ghatwal*. The rights and interest of each *ghatwal* in his tenure last for his life (*Jogeshar Sirkar* v. *Nimai Karmokar*, 1 B. L. R., S. N., 7.) But any presumption that there may be against the right of a *ghatwal* to grant *mokarrari* lease cannot hold good against such leases when granted in good faith for the clearance of jungle. (*Davies* v. *Debi Mahtun*, 18 W. R., 377).

Regarding *ghatwali* tenures of the second class, the holders of which are mere village police, the leading case is that of *Secretary of State* v. *Poran Singh* (I. L. R., 5 Calc., 740.) In this it has been laid down that the dismissal of a *ghatwal* will carry with it forfeiture of his tenure. The Civil Courts cannot interfere to reinstate a *ghatwal*, who has been dismissed by the police authorities, in the land which he formerly held as *ghatwal*. The right to possess the land depends on

the tenure of the office. (*Debi Narain Singh* v. *Sri Krishna Sen*, 1 W. R., 321.) Permanent leases granted by the *ghatwals* of Birbhum prior to the Decennial Settlement for the due performance of the police duties for which the lands were originally granted to the *ghatwals*, and which have been held from generation to generation cannot be set aside at the instance of the present sirdar *ghatwals*. The creation of such under-tenures is not beyond the power of the *ghatwals*. (*Mukurbhano Deo* v. *Kastura Koeri*, 5 W. R., 215.)

Service-tenures.—The law relating to *chaukidari chakeran* lands will be found in sec. 41, Reg. VIII of 1793, and secs. 48 and 49, Act VI of 1870 (B.C.), and sec. 375 of Act V of 1876 (B.C.) The leading case on the subject is that of *Jai Krishna Mukharji* v. *The Collector of East Burdwan* (1 W. R., P. C., 26; 10 Moo. I. A, 16), in which it "was declared that all the village-watchmen, not only of Burdwan, but of the whole of Bengal, whose lands were included in the operation of sec. 41, Reg. VIII of 1793, have been from that time liable to the performance of public service as rural police officers." (McNeile's Report on the Village-watch of Bengal, p. 94.) The subject of service-tenures is explained in the case of *Forbes* v. *Mir Mahomed Taki* (14 W. R., P. C., 28; 5 B. L. R., 529; 13 Moo. I. A., 438); and in the recent case of *Harogobind Raha* v. *Ramratno De* (I. L. R., 4 Calc., 67), where it is laid down that a distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. In the same case, an opinion was expressed that rights of occupancy cannot accrue in lands held under a service-tenure, but the point was not decided.

It has also been held that when the holder of a service-tenure subject to a quit-rent to the zamindar dies leaving his rent for the last three years unpaid, and his son succeeds him in the tenure, the zamindar cannot sue the son as his father's successor in the tenure for his father's arrears of rent. (*Nil Mani Singh* v. *Madhab Singh*, 1 B. L. R., A. C., 195).

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

When a raiyat holds his homestead as part of his holding as a raiyat, the general provisions of this Act will apply as well to his homestead as to the land which he uses exclusively for purposes of cultivation, and when a raiyat holds his homestead otherwise than as part of his holding as a raiyat, under this section the provisions of this Act will apply, and he may acquire rights of occupancy in it, unless there is a local custom or usage to the contrary. The question whether a raiyat holds his homestead as part of his holding as a raiyat, or whether he holds his agricultural land as part of his homestead, will be a question of fact which the Courts will have to decide. The rule laid down in *Chandessuri* v. *Ghinah Pandey* (24 W. R., 152) may, perhaps, help them to decide this question. In this case it was held, that when the principal subject of the entire occupation is *bastu* land, the residue (if any) of the holding being entirely subordinate, the Small Cause Court has jurisdiction; in other words, the provisions of the rent law will not

apply. But when the principal subject is agricultural land, the buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction, and the provisions of the rent law will apply. When the rent for *bastu* lands was paid by the raiyats to the landlord separately from the rent paid for cultivated lands, but the tenure of the *bastu* lands was a *raiyati* tenure, it was held that, as a matter of law, the distinction in the mode of paying the rent did not exclude those lands from the operation of Act VIII of 1869, B. C. (*Pogose* v. *Raju Dhobi*, 22 W. R., 511). Under the provisions of the present Small Cause Court Act (IX of 1887), however, all suits for arrears of rent of homestead land, whether held as part of a raiyat's holding or otherwise, will lie in the Civil Court and not in the Small Cause Court. (*Uma Charn Mandal* v. *Bijari Bewa*, I L. R., 15 Calc., 174.)

Homestead land in towns not enhanceable under the rent law.—Under the old law, it has been laid down that *bastu* land used for the sites of houses situated in a town cannot form the subject of suits for enhancement under the provisions of the rent law. (*Naimuddi Joardar* v. *Moncrieff*, 3 B. L. R., A. C., 283 ; 12 W. R., 140.) The same has been held in *Kali Mohan Chatarji* v. *Kali Krishna Rai*, 2 B. L. R., App., 39 ; 11 W. R., 183 ; *Madan Mahan Biswas* v. *Stalkart*, 9 B. L. R., 97 ; 17 W. R.. 441 ; *Durgasundori Dasi* v. *Umdatunnissa*, 18 W. R., 235 ; 9 B. L. R., 101 ; *Khairuddin Ahmad* v. *Abdul Baki*, 9 B. L. R., 103 note ; *Church* v. *Ram Tanu Shaha*, 9 B. L. R., 105 note ; *Kailash Chandra Sirkar* v. *Umanand Rai*, 24 W. R., 412 ; and *Purna Chandra Rai* v. *Sadat Ali*, 2 C. L. R., 31. In the case of *Naimuddi Joardar* v. *Moncrieff* (3 B. L. R., A. C., 283 ; 12 W. R., 140), above referred to, it was further laid down that *bastu* land, which is the site of a house occupied by a raiyat engaged in cultivating the surrounding lands, does fall under the provisions of Act X of 1859, and is liable to enhancement. (See also *Abdul Hamid* v. *Dongaram De*, 3 B. L. R , App., 133.) The terms of this section would seem in no way to interfere with these rulings ; for it only refers to homestead land held by a raiyat, and a person holding land used for the sites of houses in a town will probably not come within the definition of a raiyat (sec. 5 (12)). But under sub-sec. 4, sec. 167, of this Act, a purchaser, at a sale under this Act, of a tenure or holding sold on account of arrears of rent due in respect thereof, may, if he has power to avoid all encumbrances, sue to enhance the rent of land, which is the subject of a "protected interest" of the nature specified in cl. (*c*), sec. 160. The protected interest specified in cl. (*c*), sec. 160, is "any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made."

Rights of occupancy in homestead land under the old law.—Under the old law, it is clear that a raiyat could acquire no right of occupancy in homestead land held otherwise than as part of his holding as a raiyat, save by custom. (*Mohar Ali Khan* v. *Ram Rattan Sen*, 21 W. R., 400 ; *Swarno Mayi* v. *Blumhardt*, 9 W. R., 552 ; *Ramdhan Khan* v. *Haradhan Paramanik*, 9 B. L. R., 107 note ; 12 W. R., 404.) But now under the terms of this section, a person (if he be a raiyat), holding homestead land otherwise than as part of his holding as a raiyat, acquires rights of occupancy in it, unless there be a custom or usage to the contrary. In most districts there no doubt is such a custom or usage, but it will be necessary to prove it when it is desired not to allow a raiyat a right of occupancy in his *bastu* land.

Whether possession of a tenant in homestead land can be disturbed.—A tenant may build houses on agricultural land, and still retain his right of

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occupancy in it; for, in *Prasanno Kumar Chatarji* v. *Jagannath Baisak* (10 C. L. R., 25), it was held, that where land has, with the consent of the landlord, ceased to be agricultural, and the tenant has since built a homestead, or used part of it for tanks or gardens, the nature of the tenure is not thereby changed, nor is the tenant thereby deprived of any right of occupancy which he might have acquired. It has further been held, that where a landlord allows his lessee to invest capital in erecting buildings on land let for cultivation, and raises no objection for a considerable number of years, he will not be allowed to disturb the holding. The fact of buildings having been permitted, without objection, to stand on lands for a considerable number of years is *primâ facie* proof that the land had originally been leased for building purposes. (*Brajanath Kundu* v. *Stewart*, 8 B. L. R., App., 51; 16 W. R., 216; *Jahori Lal Sahu* v. *Dear*, 23 W. R., 399. On the other hand, in *Prasanno Kumari Debi* v. *Ratan Baipari* (I. L. R., 3 Calc., 696; 1 C. L. R., 577), it was laid down that there is no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, *without any arrangement with his landlord*, builds a dwelling-house upon the land demised. This ruling was followed in the case of *Tarakpada Ghosal* v. *Shyama Charn Napit* (8 C. L. R., 50), in which it was said, that there is no law in this country which gives anything of a protected tenure or holding to a person, who has occupied homestead land, however long may have been the period of his possession. In *Arat Sahu* v. *Prandhan Pykara* (I. L. R., 10 Calc., 502), it was said, that the mere record of the name of a tenant, who was found in occupation of a particular piece of homestead land in settlement proceedings, and of the rent payable by him, does not invest him with any permanent title to hold it. Further, in *Gangadhar Shikdar* v. *Ayimuddin Shah Biswas* (I. L. R., 8 Calc., 960; 11 C. L. R., 281), it has been held, that where land has been let for agricultural purposes, and it is found that buildings of a substantial nature have been erected thereon many years before by the defendant's ancestors, to whom the lands had been granted, the Court *may, if it thinks fit, presume* that the land was granted for building purposes, and that the grant was of a permanent character.

Local custom or usage as to homestead land.—As to "local custom or usage" with regard to *bastu* land, it is to be remarked that, in some parts of the country, this species of land is, by custom, held rent free. (See Government of Bengal Report of 1881 on the Bengal Tenancy Bill, Vol. II., pp. 105 and 216.) In some parts, too, such holdings are, by custom, transferable. (*Chandra Kumar Rai* v. *Kadirmani Dasi*, 7 W. R., 247; *Beni Madhab Banarji* v. *Jai Krishna Mukharji*, 7 B. L. R., 152; 12 W. R., 495; *Durga Prasad Misra* v. *Brindaban Sukal*, 7 B. L. R., 159; *Sham Sundari Debi* v. *Nobin Chandra Kolya*, 6 C. L. R., 117.)

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

Effect of custom under former law.—By this section, the whole provisions of this Act are made subject to custom, usage and customary right. The provisions of the former law were also liable to be overridden by custom, as laid down by Peacock, C.J., in the case of *Thakurani Dassi* v. *Bisheshar Mukharji*, B. L. R., F. B., 326, in which he said, "that Act X of 1859 did not take away the right of any raiyat who had a right, by grant, contract, prescription, or other valid title, to hold at a fixed rate of rent." "The mode of proving custom is not very well understood in this country," it is said in the Rent Law Commission's Report, para. 12, "and, unfortunately, notwithstanding a *dictum* of Sir Barnes Peacock to the contrary an idea got to prevail, that Act X had superseded all customs, and was intended to do away with all agricultural rights, except those especially mentioned and provided for in that Act. We believe that there are many local customs in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice, and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

What "custom" is.—It is, however, difficult to say what "custom" is, and still more difficult to say by how many years' prevalence a custom can be held to be well established. A definition of "a custom" has been given by the Privy Council in the case of *Har Prasad* v. *Sheo Dyal* (26 W. R., 55), in which it was said that "a custom is a rule, which, in a particular family or district, has, from long usage, obtained the force of law. It must be ancient, certain, and reasonable and, being in derogation of the general rules of law, must be constructed strictly." (See also Broom's Legal Maxims, 5th Edn., p. 917.) In *Lachman Rai* v. *Akbar Khan* (I. L. R., 1 All., 440), Turner, J., laid down that a custom to be good must be definite; and in another case (*Lala* v. *Hira Singh*, I. L. R., 2 All., 49) it was said, that "a custom to be valid must be ancient, must have been continued and acquiesced in, and must be reasonable and certain." There are rulings of the Calcutta High Court to the same effect. Thus, in the case of *Jamila Khatun* v. *Pagal Ram* (1 W. R., 250), it was said—"the plaintiff relies upon a custom, and unless he can show that the custom is undoubted and invariable he is not entitled to a decree." In the case of *Beni Madhab Banarji* v. *Jai Krishna Mukharji* (7 B. L. R., 152; 12 W. R., 495), Glover, J., said that "a custom must be proved by strict evidence that what is sought to be established has existed unaltered and uninterrupted from time immemorial." In the same judgment, Glover, J., alluding to the case of *Chandra Kumar Rai* v. *Piari Lal Banarji* (6 W. R., 190), in which it was said that a custom as to the transferableness of *khudkhasht jotes* need not be absolutely invariable, observed that he doubted the correctness of the decision. In *Lachmipat Singh* v. *Sadatulla Noshyo* (I. L. R., 9 Calc., 698; 12 C. L. R., 382), it was held that an alleged custom, under which an unlimited number of persons could fish in a *bhil*, and so take away the profits of private property, so that nothing might be left to the owner, was unreasonable and invalid.

How "custom" has to be proved.—As to the evidence that will be sufficient to establish a custom, Grey, C. J., has said:—"Although in this country

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we cannot go back to that period which constitutes legal memory in England, *viz.*, the reign of Richard I, yet still there must be some limitation, without which a custom ought not to be held good. In regard to Calcutta, I should say, that the Act of Parliament in 1773, which established this Supreme Court, is the period to which we must go back to found the existence of a valid custom . . . . . In regard to the mofussil, we ought to go back to 1793. Prior to that date there was no registry of the regulations, and the relics of them are exceedingly loose and uncertain. I admit that usage for twenty years may raise a presumption in the absence of direct evidence of a usage existing beyond the period of legal memory." (*Doe d. Jago Mohan Rai* v. *Nimu Dasi*, Montriou's Cases of Hindu Law, 596.) On this point the Calcutta High Court has said :—"In an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary ; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable." (*Jai Krishna Mukharji* v. *Durga Narain Nag*, 11 W. R., 348.) But the evidence of a few antagonistic witnesses will not prove a custom (*Jai Krishna Mukharji* v. *Raj Krishna Mukharji*, 1 W. R., 153) ; and in the case of *Indra Narain Chaudhri* v. *Mahomed Naziruddin* (1 W. R., 234), conflicting decisions of the Subordinate Courts (three on one side, and one on the other) were held not to prove the prevalence of the Mahomedan custom of pre-emption among the Hindus of Chittagong. In the case of *Lachman Rai* v. *Akbar Khan* (I. L. R., 1 All., 440), Turner, J., said :—"The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by judicial or revenue records, or private accounts and receipts that the custom has been enforced."

Difference between custom and usage.—The section, however, does not speak only of "custom." It makes use of the word "usage," and it is understood this expression was introduced with the object of giving Courts the power of taking cognizance of agricultural and local usages, though not so strictly proved as customs are apparently required to be. It has, however, not yet been settled what a usage is, or how it can be proved. In discussing the subject of "mercantile usage," the Privy Council in the case of *Jaga Mohan Ghosh* v. *Manik Chand*, (7 Moo. I. A., 282) has said :—"To support such a ground there needs not be either the antiquity, the uniformity or the notoriety of custom, which in respect of all these, becomes a local law. The usage may still be in course of growth ; it may require evidence for its support in each case ; but in the result it is enough, if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract." In *Raj Krishna Singh* v. *Ramjai Sarmah* (19 W. R., 8 ; I. L. R., 1 Calc., 186), it has been said :—"It is of the essence of family usages that they should be certain, invariable and continuous, and well established. Discontinuance must be held to destroy them. This would be so when the discontinuance has arisen from accidental causes ; and the effect cannot be less, when it has been intentionally brought about by the concurrent will of the family." In the absence of any rulings by the Courts of this country defining what an agricultural usage is and prescribing how it is to be proved, it may be of some use to refer to the case law of the English Courts on the point. The law of England regarding agricultural usages is expounded in *Wigglesworth* v. *Dallison* (1 Smith, L. C., 598, 7th Edn.), and its attendant train of decisions (Woodfall, L. and T., 725, 12th Edn.). Such

usages are known as "customs of the country," and "the landlord and tenant are presumed to have contracted with reference to the custom, and the custom is incorporated into the contract, whether oral, or in writing, or by deed, unless the custom and the terms of the contract are expressly or impliedly inconsistent with it. Every custom of the country must be proved by the party setting it up. It need not have existed from time immemorial. A common usage of the neighbourhood is sufficient." It will be established on proof of a usage reasonable and certain in its nature, and generally recognized and acted upon in a particular district, as, for example, the custom proved in *Wigglesworth* v. *Dallison* that a tenant for a term of years, which expires on the 1st of May of any year, should be entitled to the way-going crop. Another such usage is the tenant's right in some parts of the country to the trees he has planted. Almost every district and country in England has customs of this class.

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Sched. III.

184. (1) The suits, appeals, and applications specified in Schedule III, annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

The classes of suits, specified in Sched. III annexed to this Act, are: suits (1) for ejectment of tenure-holders or raiyats for breach of a condition in respect of which there is a contract, expressly providing that ejectment shall be the penalty of such breach; (2) for arrears of rent, (*a*) when the arrear fell due before a deposit was made under sec. 61 on account of the rent of the same holding, (*b*) in other cases; and (3) for recovery of possession of land claimed by the plaintiff as an occupancy-raiyat. Appeals to a District Judge, or to a Special Judge, and to a Commissioner, from orders of a Collector under this Act, and applications for the execution of decrees for sums not exceeding Rs. 500, exclusive of interest accruing after decree, except when execution has been prevented by the judgment-debtor's fraud, are also specified in Sched. III.

Limitation in suits, appeals, and applications not specified in Schedule III.—To suits, appeals, and applications not specified in Sched. III, the general provisions of Act XV of 1877 are applicable. See *Golap Chandra Naulakha* v. *Krishna Chandra Das Biswas* (I. L. R., 5 Calc., 314); in which it is said that "it is quite inaccurate to say that the new Limitation Act does not apply to cases under the Rent Law. What the Act says is this:—"When by any special or local law, now or hereafter in force in British India, a period of limita-

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tion is specially provided for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed,—that is to say, the time within which the suit is to be brought remains unaffected by the Act of 1877. But nothing forbids the application of the other provisions, and specially of the provisions for computing the period of limitation contained in Part III of the new Act."

Portions of the Indian Limitation Act not applicable to such suits, &c

*XV of 1877.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877,* shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877,* shall apply to all suits, appeals, and applications mentioned in the last foregoing section.

Disabilities of minority and lunacy inapplicable to rent-suits.—Section 7 provides, that when a person is a minor, insane, or an idiot, he may institute a suit on making an application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed by the law. Section 8 provides, that when one of several joint creditors or claimants is under a legal disability, and a discharge can be given without his concurrence, time will run against them all; but when no such discharge can be given, time will not run against any of them, until one of them becomes capable of giving such discharge without the concurrence of the others. Section 9 provides, that when once time has began to run, no subsequent disability or inability to sue stops it.

The Rent Commission have, in para. 161 (p. 80) of the Report, explained the reasons which have led to the disability of minority being made inapplicable to rent suits. "We think that a minor," they said, "ought not to be competent, on coming of age, to sue a raiyat for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate, and that if the manager of a minor's estate neglect his duty of realizing rents as they fall due. the minor's remedy ought to be an action for damages against such manager."

But it is only to the suits and applications specified in Sched. III of this Act that the provisions of secs. 7, 8, and 9 of the Limitation will not apply. To suits, appeals, and applications under the Rent Law not specified in schedule III, secs. 7, 8, and 9, as well as the other provisions of the Limitation Act, are clearly applicable.

Rules of Limitation Act applicable in computing special periods of limitation.—Sub-section (2) follows the High Court rulings in the cases of *Behari Lal Mukharji* v. *Manglonath Mukharji* (4 C. L. R., 371; I. L. R., 5 Calc., 110); *Golap Chandra Naulakha* v. *Krishna Chandra Das Biswas* (I. L. R., 5 Calc., 314); *Hossan Ali* v. *Donzelle* (I. L. R., 5 Calc., 906); *Khosh Lal Mahton* v. *Ganesh Datta* (I. L. R., 7 Calc., 690); *Nizabatullah* v. *Wazir Ali* (I. L. R., 8 Calc., 910); *Khettro Mohan Chakrabartti* v. *Dinabashi Shaha* (I. L. R., 10 Calc., 265); and *Guracharya* v. *The President of the Belgaum Town Municipalities* (I. L. R., 8 Bom., 529), and makes it clear that the special periods of limitation prescribed for suits, appeals,

and applications, specified in Sched. III of this Act are unaffected by the provisions of the Limitation Act of 1877. But the rules contained in the Act for computing these special periods of limitation, as well as all its other provisions, except secs. 7, 8 and 9, are applicable to such suits, appeals, and applications. All rulings to the contrary effect are therefore set aside. (See *Purran Chandra Ghosh* v. *Mati Lal Ghosh Jahira*, I. L. R., 4 Calc., 50 ; *Annoda Prasad Mukharji* v. *Krishna Kumar Moitro*, 19 W. R., 5 ; and *Poulson* v. *Madhu Sudan Pal*, 2 W. R., Act X, 21.)

Limitation in cases of suspension of relation of landlord and tenant.—An important rule of limitation in rent-suits was laid down by the Privy Council in the case of *Swarnamayi* v. *Shashi Mukhi Barmani* (12 Moo. I. A., 244 ; 11 W. R., P. C., 5 ; 2 B. L. R., P. C., 10). In this case, "a zamindar brought a *patni* tenure to sale under Reg. VIII of 1819. The *patnidar* was, thereupon, ousted, and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure, together with mesne profits, from the purchaser for the period of his possession. The zamindar subsequently sued the *patnidar* for rent for this period. Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held, that it was not barred ; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived ; that the *patnidar*, on being restored to possession, took back the estate subject to the obligation to pay the rent ; and that the particular arrears must be taken to have become due in the year in which that restoration to possession took place." (Rent Law Commission Report, para. 162, p. 81.) This ruling was followed in *Ishan Chandra Rai* v. *Ahsanullah*, 8 B. L. R., 537 note ; 16 W. R., 79 ; in *Dindayal Paramanik* v. *Radha Kisori Debi*, 8 B. L. R., 536 ; 17 W. R., 415 ; and in *Mohesh Chandra Chakladar* v. *Gangamani Dasi*, 18 W. R., 59. The Rent Law Commission state the rule to be deduced from this case of *Swarnamayi* v. *Shashi Mukhi Barmani* thus :—"Where the result of the litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other, and to have stood in this relation while such litigation was pending, but until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation." But in the above case of *Swarnamayi* v. *Shashi Mukhi Barmani*, there are two points to be noticed : (1) the *patnidar* was out of possession, and the zamindar could not sue him for rent as long as he remained so ; (2) the *patnidar* received mesne profits for the period for which rent was claimed. In subsequent cases, although the landlord had denied the continuance of the relation of landlord and tenant, and attempted to put an end to such relation, the tenant was, nevertheless, not dispossessed. The High Court, therefore, decided that there was nothing to prevent the landlord from recovering the rent, and declined to follow the rule laid down by the Privy Council in the above-mentioned case. *Watson & Co.* v. *Dhanendra Chandra Mukharji*, I. L. R., 3 Calc., 6 ; *Brajendra Kumar Rai* v. *Rakhal Chundra Rai*, *ib.* 791 ; *Haro Prasad Rai* v. *Gopal Das Datta*, *ib.*, 817 ; *Haronath Rai* v. *Golak Nath*, 19 W. R., 18 ; *Barada Kant Rai* v. *Chandra Kumar Rai*, 23 W. R., 280 ; *Haro Prasad Rai* v. *Gopal Das Datta*, I. L. R., 9 Calc., 255 ; 12 C. L. R., 129 ; *Sherriff* v. *Dinonath Mukharji*, I. L. R., 12 Calc., 258.)

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.
XLV of 1860.*

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.*

(2) Any person who abets within the meaning of the Indian Penal Code* the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

See secs. 447, 107 to 114 and 117 of the Indian Penal Code.

Agents and representatives of landlords.

Power for landlord to act through agent.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

The written authority referred to in this section must be stamped as a power-of-attorney under Art. 50, Sched. I, Act I of 1879. See note to sec. 145, p. 214.

Suits against agents.—The provisions of secs. 33, Act X of 1859, and 30, Act VIII of 1869, B. C., providing for suits against agents for money, papers or accounts being brought within one year after the determination of the agency have not been reproduced in this Act. Such suits can, therefore, not now be brought under the rent law. The procedure to be followed in such suits has been laid down in *Annoda Prasad Rai* v. *Dwarkanath Gangopadhya*, I. L. R., 6 Calc., 754, and *Digambar Mazumdar* v. *Kali Nath Rai*, I. L. R., 7 Calc., 654.

Joint landlords to act collectively or by common agent.

188. Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Old law as to powers of co-sharers.—Under the old law, a co-sharer could collect his share of the rent separately, provided he had arranged that his share of the rent should be so paid. Such an arrangement might be evidenced by direct proof, or by usage from which its existence might be presumed. (*Anu Mandal* v. *Kamaluddin*, 1 C. L. R., 248.) In the absence of such an arrangement, no such suit could be maintained. (*Ghani Mahomed* v. *Moran*, I. L. R., 4 Calc., 96; 2 C. L. R., 370; see also *Ramjai Singh* v. *Nagar Ghazi*, 5 W. R., Act X, 68; *Beni Madhab Ghosh* v. *Thakur Das Mandal*, 6 W. R., Act X, 71; *Ganga Narain Das* v. *Saroda Mohan Rai*, 12 W. R., 30; 3 B. L. R., A. C., 230; *Sri Misra* v. *Crowdy*, 15 W. R., 243; *Haradhan Gossami* v. *Ram Nawaz Misra*, 17 W. R., 414; *Bhairab Mandal* v. *Gangaram Banarji*, 17 W. R., 408; *Dinobandhu Chaudhri* v. *Dinonath Mukharji*, 19 W. R., 168; *Lalan* v. *Hemraj Singh*, 20 W. R., 76; *Baikanto Kaibarta* v. *Soshi Mohan Pal*, 22 W. R., 526; *Braja Kishor Bhartiacharji* v. *Uma Sundari Debi*, 23 W. R., 37; *Dinobandhu Rai* v. *Uma Charan Chaudhri*, 23 W. R., 53; *Ahmuddin* v. *Girish Chandra Shamanto*, I. L. R., 4 Calc., 350; *Lutfulhak* v. *Gopi Chandra Mazumdar*, I. L. R., 5 Calc., 941. But see *contra*, *Amrit Chaudhri* v. *Haidar Ali*, W. R., Sp. No., Act X, 63; *Mahomed Singh* v. *Maghi Chaudhurani*, 1 W. R., 253, and *Kali Charan Singh* v. *Solano*, 24 W. R, 267.) Any co-sharer could also sue for his share of the rent separately, whether he had been previously in the habit of so collecting his share of the rent or not, provided he made such of his co-sharers as would not join as co-plaintiffs, co-defendants in the suit. (*Harkishor Das* v. *Jugal Kishor Shaha*, 16 W. R., 281; *Salehunnissa Khatun* v. *Mohesh Chandra Rai*, 17 W. R., 452; *Durga Charn Sarmah* v. *Jampa Dasi*, 21 W. R., 46; 12 B. L. R., 289; *Mokhada Sundari Dasi* v. *Karim*, 23 W. R., 11; *Jadu Das* v. *Sutherland*, I. L. R., 4 Calc., 556; 3 C. L. R., 223; *Ganga Narain Sirkar* v. *Srinath Banarji*, I. L. R., 5 Calc., 915; *Abhoy Gobind Chaudhri* v. *Hari*

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or perhaps, (13) apply for the attachment and sale of a tenure or holding (sec. 162), except collectively or by a common agent. If co-sharers, who collect their share of the rent separately are not joint landlords, then they can do all these things, but not otherwise.

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits ;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875 ; and

V (B.C.) of 1875.

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil ; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

The rules made by the Local Government under the provisions of this section, with the Board of Revenue's instructions thereon, will be found in Appendix I.

Procedure for making publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner :

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

The draft of the proposed rules made by the Local Government under this Act were published in the *Calcutta Gazette* of November 4th, 1885. It was then notified that they would be taken into consideration on December 7th, 1885. The rules made under the Act were finally published in the *Calcutta Gazette* of December 23rd, 1885. The draft of the rules made by the High Court under this Act were published in the *Calcutta Gazette* of the 3rd March, 1886. They were finally published in the *Calcutta Gazette* of 28th July, 1886, Part I, pp. 886 and 887, and *Government of India Gazette*, dated 7th August, 1886, Part II, pp. 470 and 471. They will be found printed in Appendix III. The rules of the Registration Department for the registration of documents under the Tenancy Act were published in the *Calcutta Gazette* of the 30th June, 1886, Part I, p. 784. They are printed in Appendix IV.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Saving as to land held in a district not permanently settled.

In temporarily-settled districts, "the Government has a right to raise its revenue on the occasion of a fresh settlement. Of this right, no act of the landlord can deprive it; and, accordingly, if the landlord were to be bound by a grant at fixed rates made by him so as to extend beyond the term of the settlement, the result would be that, on the occasion of a new settlement, he might

be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenant." (Statement of Objects and Reasons, Bengal Tenancy Bill, *Gazette of India*, March 3rd, 1883, Chap. III, para. 21, p. 132.)

But where Government acquires by purchase, escheat or otherwise an estate which has been permanently settled, the right to hold at fixed rents may exist as in any other estate, and the fact of such estate subsequently coming under settlement of revenue does not take away such rights to hold at fixed rents.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

A Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

The object of the last clause of this section is to prevent the Government revenue of an estate being diminished by grants of rent free land, which reduce the gross rental upon which the Government revenue is assessed.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c. Cl. 4, sec. 23, Act X, 1859.

193. The provisions of this Act, applicable to suits for the recovery of arrears of rent, shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

What provisions of this Act are applicable to rights of pasturage, &c.—From the words "*for the recovery of arrears of rent*," in this section it may at first sight appear as if only the provisions of the Act relating to the recovery of arrears of rent are applicable to pasture land, forest-land, rights of fishery, and the like, and as if questions connected with the enhancement of rent, reduction of rent, acquisition of status, &c., that may arise regarding such land or rights, are left wholly unprovided for. This is not altogether the case. Under sec. 21 a raiyat acquires occupancy-rights in all land held by him "as a raiyat" in his village. If, therefore, he holds pasture-land, a tank, or thatching grass land as part of his holding as a raiyat, he may acquire rights of occupancy in them, and such

land or tank will be subject to *all* the incidents of a raiyat's holding, the provisions of this section notwithstanding. Thus, in *Nidhi Krishna Basu* v. *Ram Das Sen* (20 W. R., 341), it was held, that a right of occupancy in the land includes the same right in respect of a tank appurtenant to the land. In *Fitzpatrick* v. *Wallace* (11 W. R., 231) it was held, that a right of occupancy could be gained in land used for the purpose of grazing horses. But the case is different when the tenant has merely a right to graze cattle, cut wood, catch fish, or cut the grass of thatching grass land, which grows spontaneously, and which he in no way cultivates (*Gur Dial* v. *Ramdut*, 1 Agra F. B., 15); in short, in such cases as he has only *profits à prendre* over the land. In these cases no rights of occupancy can be acquired, and the occupancy and enhancement provisions of the Act are inapplicable. Thus, there is no right of occupancy in, and Act X of 1859 does not apply to, a mere fishery or *jalkar*. (*Uma Kant Sirkar* v. *Gopal Singh*, 2 W. R., Act X, 19; *Jaggobandhu Saha* v. *Promothonath Rai*, I. L. R., 4 Calc., 767; *Bollye Satti* v. *Akram Ali*, I. L. R., 4 Calc., 961.) The provisions of Act X which confer a right of occupancy do not apply to a tank used for the preservation and rearing of fish, and not forming part of any grant of land, or any appurtenance of any land. (*Sibo Jelya* v. *Gopal Chandra Chaudhri*, 19 W. R., 200). A right of occupancy is not acquired in a tank, when the tank is the principal subject of the lease, and only so much land passes with it as is necessary for the banks. (*Nidhi Krishna Basu* v. *Ram Das Sen*, 20 W. R., 341.) Where a jotedar had exercised rights of fishery over two *jalkars* for more than twelve years, not as the owner of the *jote* (with which the *jalkars* were not connected), but as a tenant under a landlord, it was held that such possession did not confer upon him a right of occupancy. (*Sham Narain Chaudhri* v. *Court of Wards*, 23 W. R., 432.) Act X of 1859 does not entitle a lessor to raise the rent payable from a lessee on account of a right leased to the latter to collect lac insects from trees growing in the former's lands. (*Gopal Chandra Singh Murah* v. *Sankari Paharin*, 23 W. R., 458.) There is nothing illegal in a contract under a farming lease from the owner of a *hat*, to collect a portion of the proceeds of sale from persons exposing their goods for sale in the *hat* under temporary sheds or in open places, and such collections are not in the nature of internal duties, but of rent for the use of land. (*Bangsho Dhar Biswas* v. *Madhu Mahaldar*, 21 W. R., 383.)

All the provisions of this Act for recovery of arrears of rent not applicable to rights of pasturage, &c.—There are, of course, many provisions of this Act which, though relating to the recovery of arrears of rent, are inapplicable when the tenant has only a limited interest in land, as in the case of rights of pasturage, forest-rights, and rights of fishery. Thus, though a tenant may have a right to gather fruit from trees, or catch fish in a tank, the trees and the tank themselves cannot be attached and sold in execution of a decree for arrears of rent against the tenant. *Jalkar*, or the right of fishery may exist in India as an incorporeal hereditament, and as a right to be exercised over the land of another. (*Forbes* v. *Mahomed Hossein*, 12 B. L. R., 210.) A tenant will necessarily have no right in the immoveable property itself over which he may have a *profit à prendre*; and so, in *Bishnu Lal Das* v. *Khyrunnissa Begam* (1 W. R., 78), it was held, that when a *jalkar* dries up, the land does not, as a matter of course, become the right of the holder of the *jalkar*. Similarly, when a river in which the plaintiffs had a right of fishery, ceased to be a flowing stream, and the defendants acquired a right to the river-bed by the law of accretion, it was held that that right would be subject to the exercise by the plaintiffs of their prior right of fishery. (*Kali Sundra Rai* v. *Dwarkanath Mazumdar*, 18 W. R., 461.)

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(See also *Manohar Chaudhri* v. *Nar Singh Chaudhri*, 11 W. R., 272; *Radha Mohan Mandal* v. *Nil Madhab Mandal*, 24 W. R., 200.) A *jalkar* does not necessarily imply any interest in the soil itself, and, therefore, a *patni* of a *jalkar* is not an interest in land within the meaning of the definition of the Road Cess Act. (*David* v. *Grish Chandra Guha*, I. L. R., 9 Calc., 183.) But there is no such broad proposition of law as that the settlement of a *jalkar* implies no right in the soil. (*Rakhal Charn Mandal* v. *Watson*, I. L. R., 10 Calc., 50.) A *jalkar* is not an easement within the meaning of Act IX of 1871, sec. 592. (*Parbatinath Rai* v. *Madhu Parol*, 1 C. L. R., 592.)

Applicability of Stamp Act and Transfer of Property Act.—In sec. 2 (5) of Act I of 1868, immoveable property is defined as including "land, benefits to arise out of land and things attached to the earth." But under sec. 3 of the Transfer of Property Act immoveable property does not include "standing timber, growing crops or grass." Many of the rights referred to in this section (*e.g.*, rights of fishery), however, would seem to come within the definition of "immoveable property." Hence, unless the provisions of sec. 117 of the Transfer of Property Act, which exempt leases *for agricultural purposes* from the provisions of Chap. V apply, the terms of sec. 107, which require leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent to be registered, and of sec. 111, regarding the determination of leases of immoveable property, will be applicable to such leases. Again, in Sched. II, art. 13, cls. (*b*) and (*c*) of Act I of 1879, it is only leases executed in the case of a *cultivator* without the payment of a fine or premium when a definite term is expressed, and such term does not exceed one year or the annual rent does not exceed one hundred rupees, and the counterpart of leases granted to cultivators that are exempt from stamp duty. Hence, leases of fisheries, &c., which do not come within the terms of cl. (b), art. 13, Sched. II, are liable to stamp duty.

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Tenant not enabled by Act to violate conditions binding on landlord.

Were it not for this provision, a tenant might render his landlord liable to forfeiture of his estate or tenure or to a suit for damages. The condition must, of course, be consistent with the provisions of this Act. If a proprietor let his estate to an ijaradar on condition that he was to prevent the accrual of occupancy-rights, that condition would in no way affect the title of a raiyat to acquire such rights.

Savings for special enactments.

195. Nothing in this Act shall affect—

Savings for special enactments.

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities ;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ;

(*d*) any enactment relating to the partition of revenue-paying estates ;

(*e*) any enactment relating to patni tenures, in so far as it relates to those tenures ; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

Settlement law.—For the laws relating to the powers and duties of Settlement-officers, see note on p. 176.

Realization of rent in Government and Wards' Estates.—The enactments relating to the realization of rents in estates belonging to Government or under the management of the Court of Wards, or of the Revenue-authorities, are Acts VII (B. C.) of 1868 and VII (B. C.) of 1880. Under these Acts the Collector makes a certificate that the amount is due, and it can be executed as a decree, unless the tenant proceeds in the Civil Court to have it set aside. If he does so, he must proceed within a year of the service on him of a notice of its having been made and filed in the office of the Collector, and the tenant must have first stated in a petition to the Collector the grounds on which he claims to have the certificate set aside, or must satisfy the Civil Court that he had good reason for not doing so.

Revenue sale laws.—The enactments relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue are Acts XI of 1859 (secs. 37 and 52), VII (B. C.) of 1868 (secs. 11 and 12), and II (B. C.) of 1871.

The partition of revenue-paying estates is now made under Act VIII (B. C.) of 1876, and the law relating to *patni* tenures is to be found in Regs. VIII of 1819, and I of 1820, and Acts VI of 1853, and VIII B. C. of 1865.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

"In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme Legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants." (Report of the Select Committee, dated 12th February, 1885.)

SCHED. I.

SCHEDULE I.

(See *Section* 2.)

REPEAL OF ENACTMENTS

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793 ...	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent taluqdars and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64, and 65
XII of 1805 ...	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattaspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26, and 27.
XVIII of 1812 ...	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869 ...	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879 ...	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor-General in Council.

Number of year.	Subject of Act.	Extent of repeal.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

BENGAL TENANCY ACT, 1885.

FORM OF RECEIPT.*

(LANDLORDS' PORTION.)

1. Serial number of receipt_____
2. Estate_____; village_____; thana_____
3. Tenant's name_____, son of_____
4. Area of holding ... *Nukdi*, Bighas_____ / *Baoali*, Bighas_____
   Rent of holding ... Rupees_____ / Maunds_____
   Julkur, Rs_____ / Bunkur ,, _____ / Phulkur ,,
   Government cesses ... Road cess, Rs_____ / Public works cess, Rs._____
5. Signature of the landlord or his authorized agent_____

BENGAL TENANCY ACT, 1885.

FORM OF RECEIPT.*

(TENANTS' PORTION.)

1. Serial number of recipt_____
2. Estate_____; village_____; thana_____
3. Tenant's name_____, son of_____
4. Area of holding ... *Nukdi*, Bighas / *Baouli*, Bighas_____
   Rent of holding ... Rupees_____ / Maunds
   Julkur, Rs._____ / Bunkur ,, _____ / Phulkur ,, _____
   Government cesses ... Road cess Rs._____ / Public works cess, Rs.
5. Signature of the landlord or his authorized agent_____

Section 55 of the Bengal Tenancy Act, 1885, provides as follows :—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

* NOTE.—This form of receipt was sanctioned by the Lieutenant-Governor under section 56 (3), by Government Resolution dated the 10th May, 1888. It was therein directed that this form should be introduced from the commencement of the next agricultural year, that is to say, where the Bengali year prevails, from the first day of Bysack, i. e., in April, 1889, where the Fasli and Amli year prevails, from the first of Asan, and, where any other year prevails for agricultural purposes, from the commencement of that year. A special form of receipt for use in certain estates in Pargana Barbakpur Rajshahye District has been sanctioned by Government notification of 30th January, 1888.—*Calcutta Gazette*, February 1, 1888 Part I, p 83.

SCHED. II.

Details of Payments (Tenants' portion).*

DATE OF PAYMENT, AND NAME OF PERSON THROUGH WHOM PAID.	NUKDL.		BAOULL.		JULKUR, &c.		CESSES.		Signature of the landlord or his authorized agent.
	Current on account of Kist..	Arrear on account of Year's Kist..	Current on account of crop..	Arrear on account of Year's crop..	Current on account of Kist..	Arrear on account of Year's Kist..	Current on account of Kist..	Arrear on account of Year's Kist..	

Details of Payments (Landlords' portion).*

DATE OF PAYMENT, AND NAME OF PERSON THROUGH WHOM PAID.	NUKDL.		BAOULL.		JULKUR, &c.		CESSES.	
	Current on account of Kist..	Arrear on account of Year's Kist..	Current on account of crop..	Arrear on account of Year's crop..	Current on account of Kist..	Arrear on account of Year's Kist..	Current on account of Kist..	Arrear on account of Year's Kist..

* The question has been asked—How is interest to be shown in this form of receipt? Each column may, where interest is paid, be sub-divided into three columns, thus:

Principal, | Interest. | Total. There is nothing in the Act to prevent this.

FORM OF ACCOUNT.

1 Year

2. Tenant's name

3. Particulars of holding—(area, rent, &c)

	Bighas	Rate	Rs	A	P.
Nukdi					
Government Cesses ...	...	...	...		

	Bighas	Maunds	Rs	A	P.
Baouli					
Julkur ...	...	...	...		
Bunkur ..	...	..	..		
Phulkur ...	...	...	..		

	Maunds	Rs.	A	P.
4. Demand of the year ...	...	..		
5. Balance of former years (Bakaya)		..		

	Rs	A	P
6 Total demand (current and arrear)	..		
7. Paid cash on account of { Current demand...			
{ Arrear demand ...			
Maunds...			
8. Paid in kind			

	Rs.	A.	P.
9. Balance outstanding at end of year ...			
10. Signature of the Landlord or his authorized Agent			

FORM OF ACCOUNT.

1 Year

2. Tenant's name

3 Particulars of holding—(area, rent, &c)

	Bighas	Rate	Rs	A	P.
Nukdi					
Government Cesses ...	.	...	...		

	Bighas	Maunds	Rs.	A	P.
Baouli					
Julkur	...	..	...		
Bunkur	..	...	...		
Phulkur	...	..	...		

	Maunds...	Rs.	A	P
4. Demand of the year ..	...	...		
5. Balance of former years (Bakaya)	...	..	...	

	Rs.	A.	P.
6 Total demand (current and arrear) ...	..	...	
7 Paid cash on account of { Current demand	..	...	
{ Arrear demand	...	...	
Maunds	...	..	
8. Paid in kind	...	...	...

	Rs.	A.	P.
9. Balance outstanding at end of year ...	...	...	
10. Signature of the Landlord or his authorized Agent	...		

SCHEDULE III.

LIMITATION.—(See *Section* 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding	Six months ...	The date of the service of notice of the deposit.
(*b*) in other cases ...	Three years...	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years ...	The date of dispossession.

Article 1.—A landlord who has waived his right to sue for the cancelment of a lease on the raiyat's failure to pay six successive instalments, is not barred by limitation from suing for cancelment on further breaches of the covenant. (*Duli Chand* v. *Meher Chand Sahu*, 8 W. R, 138) But in a suit for the cancelment of a lease on the ground of an alleged breach of its conditions, viz., the defendant's failure to plant 2,000 betel-nut trees within five years from the date of the lease, it was held that the plaintiff's cause of action was not a continuing or an annually recurring one, but accrued when the breach actually took place (*i. e.*,) at the expiration of the stipulated five years, and that plaintiff was bound to sue within one year from that date. (*Kali Kamal Mazumdar* v *Jumat Ali*, 11 W. R, 452.) The non-payment of rent for a term of twelve years and more does not relieve an occupancy-raiyat from the status of a tenant, so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and therefore, when the right to take rent is admitted by the raiyat, no question of limitation can arise. (*Paresh Narain Rai* v. *Kashi Chandra Talukdar*, I. L R., 4 Calc., 661.)

Article 2 (a).—A suit for rent due for a period prior to a deposit being made is not barred, when the deposit has been made not by the tenant, but by a third party. (*Ramdin Singh* v. *Chandi Prasad Singh*, 21 W. R., 278.) By a condition in the lease of a taluk, additional rent became payable in respect of all lands, which, not being in a state of cultivation at the time of the lease,

SCHED. III.

should be subsequently brought into cultivation, so soon as the lessee had enjoyed them rent-free for the space of seven years. Rent having become due under this condition on certain lands, which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court as the entire rent payable in respect of the taluk the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation, it was held that such suit, having been instituted more than six months after service of notice of such deposit on the lessee, was barred under sec. 31 of Bengal Act VIII of 1869. (*Ram Sankar Senapati* v. *Bir Chandra Manikyo*, I. L. R., 4 Calc., 714.) As the notice of a deposit of rent has to be served by the Court, it must be presumed, until the contrary be shown, that the notice was issued and duly served. (*Bijai Gobind Singh* v. *Karu Singh*, 18 W. R., 531.)

Article 2 (b). Period within which suit for arrears may be brought.—In the case of *Kashi Kant Bharttacharji* v. *Rohini Kant Bharttacharji* (I. L. R., 6 Calc., 325), it was ruled, that the last day on which a suit for recovery of arrears of rent can be instituted under sec. 29, Act VIII (B. C.) of 1869, is the last day of the third year from the close of the year in which the rent became payable (see also *Durga Das Chatarji* v. *Nobin Mohan Ghosal*, 6 W. R., Act X, 63; *Umur Narain Puri* v. *Ararat Lal*, 7 W. R., 301; *Baikant Ram Rai* v. *Sarfunnissa Begam*, 15 W. R., 523). The limitation of three years allowed for a suit to recover arrears of rent must be reckoned, not from the date of instalments, but from the last day of the year in which the arrear becomes due. (*Gobind Kumar Chaudhri* v. *Haro Gopal Nag*, 11 W. R., 537.) Rent in kind remaining unpaid is an arrear of rent, and, as such, a suit may be brought to recover it within three years from the last day of the Bengali year in which it shall have become due. But inasmuch as the actual grain is not producible at any time within three years from the time when it became due, the money value or the grain, as it stood when it was ready for delivery, must necessarily be taken to represent the grain itself. (*Krishnabandhu Bharttacharji* v. *Rotish Sheikh*, 25 W. R., 307.)

Article 3.—The High Court decisions under the old Rent Law as to the period within which a raiyat can sue to recover possession of land from which he has been ejected by his landlord are conflicting. In some cases the period has been held to be a year. (*Brindaban Chandra Sirkar* v. *Dhananjai Lashkar*, I. L. R., 5 Calc., 246; *Imam Baksh Mandal* v. *Momin Mandal*, I. L. R., 9 Calc., 280; *Srinath Bharttacharji* v. *Ram Ratan De*, I. L. R., 12 Calc., 606.) In others, it has been held that in suits in which the plaintiff sets out his title, and seeks to have his right declared and possession given him in pursuance of that title, the period is twelve years. (*Guru Das Rai* v. *Ram Narain Mitra*, B. L. R., F. B., 628; 7 W. R., 186; *Nistarini* v. *Kali Prasad Das*, 21 W. R., 53; *Asman Sing* v. *Obiduddin*, 23 W. R., 460; *Darjobatti Chaudhurani* v. *Chamru Mandal*, 25 W. R., 217; *Nilmadhab Shaha* v. *Srinibash Karmokar*, I. L. R., 7 Calc., 442; *Forbes* v. *Sri Lal Jha*, I. L. R., 8 Calc., 365; *Joyanti Dasi* v. *Mahomed Ali Khan*, I. L. R., 9 Calc., 423; *Basarat Ali* v. *Altaf Hossein*, I. L. R., 14 Calc., 624.) The Rent Commission in their Report (Vol. I, p. 71), proposed to allow one year only for a suit by a raiyat "against his landlord to recover the possession of a holding from which such raiyat has been illegally ejected by such landlord in any case not governed by sec. 9 of the Specific Relief Act I of 1877; in other words, for a suit intended to try not merely the question of dispossession without consent, but also the question of title." The Select Committee on the Bill remark with regard to this article. "We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by sec. 81 of the Central Provinces Act, 1881, we have fixed the period at two years from the date on which

he is ejected." (Selections from papers relating to the Bengal Tenancy Act, 1885, p. 242.) In two recent cases the terms of this article have been referred to. In *Ramzani Bibi* v. *Amu Baipari* (I. L. R., 15 Calc., 317), it was held that Art. 3, Sched. III of the Bengal Tenancy Act relates to suits brought by an occupancy-raiyat against his landlord, and not to a suit brought against a third party, who is a trespasser. In *Chandra Kishor De* v. *Raj Kishor Mazumdar* (I. L. R., 15 Calc., 450), it was held that the suit mentioned in sec. 184, and Sched. III, Part I, Art. 3, of the Bengal Tenancy Act, 1885, means a suit by an occupancy-raiyat as such, that is, an occupancy-raiyat claiming a right of occupancy as against his landlord.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days...	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days...	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Article 6.—It is to be noticed that this article applies not only to decrees passed under the Tenancy Act, but also to decrees passed under "any Act repealed by this Act," and, consequently, to decrees passed under Act X of 1859 and Act VIII, of 1869, B. C.

Limitation runs from date of decree, and not from date of instalment.—Under sec. 58, Act VIII (B. C.) of 1869, limitation runs from the date on which the decree was passed, and not from the date on which the sum adjudged was made payable. (*Mamtazul Hak* v. *Nirbai Singh* (I. L. R., 9 Calc., 711; 12 C. L. R., 318.) This overrules the ruling in *Gharibullah Sirkar* v. *Mohan Lal Shaha* (I. L. R., 7 Calc., 127; 8 C. L. R., 409).

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When rent-decrees for less than Rs. 500 could be executed after the lapse of three years.—The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit . . . after the lapse of three years", in sec. 58 of Bengal Act VIII of 1869, mean, that execution shall not issue unless a proper application for execution is made within three years from the date of judgment (*Golakmani Debi* v. *Mohesh Chandra Mosa*, I. L. R., 3 Calc., 547; 1 C. L. R., 149; see also *Hira Lal Sil* v. *Poran Matiah*, 6 W. R., Act X, 81; *Hridai Krishna Ghosh* v. *Kailash Chandra Basu*, 13 W R., F. B, 3; 4 B. L. R, 82); even an informal application cannot be regarded as a nullity, but must be taken as a step in execution. (*Mahomed* v. *Obidullah*, 12 C. L. R., 279; *Fazlur Rahman* v. *Altaf Hossein*, I. L. R., 10 Calc., 511; *Hari Charan Basu* v. *Subaydar Sheikh*, I. L. R., 12 Calc., 161.) But the meaning of the section cannot be relaxed any further, and it cannot be held that prior steps with the view to making an application for execution are sufficient to prevent a decree for less than Rs. 500 being barred under sec. 58, Act VIII, B. C. of 1869. (*Bhola Nath Rai* v. *Harimani Debi*, 12 C. L. R., 58.) So where an application for the transfer of a rent decree for execution has been made and granted by the Court, which passed the decree within three years from the date of the decree, but no application for execution is made to the Court to which the decree has been transferred within three years from the date of the decree, the execution of the decree will be barred by limitation under the provisions of Bengal Act VIII of 1869, sec. 58. (*Bholanath Rai* v. *Narendra Nath Rai*, I. L R., 9 Calc., 380.) None of these rulings, however, would now appear to be applicable.

What is an application in continuation of former execution-proceedings.—The effect of an order striking off execution-proceedings in consequence of an adverse decision in a claim case is not to dispose finally of the application for attachment and sale, and if the result of a regular suit prosecuted with due diligence is a final decree in favour of the decree-holder, and he makes an application for the execution of his decree, such application, whatever its form, is in substance one for the continuation of the former proceedings. (*Bubu Piarn Tuhobildarini* v. *Nazir Hossein*, 23 W. R., 183.) This ruling has been followed by a Full Bench of the Allahabad High Court in *Paras Ram* v. *Gardner* (I. L. R., 1 All., 355), in *Kalyanbhai Dipchand* v. *Ghanasham Lal Jadunathji*, I. L. R., 5 Bom., 29; *Issari Dasi* v. *Abdul Khalak*, I. L. R., 4 Calc., 415; *Basant Lal* v. *Batul Bibi*, I. L R., 6 All., 23, and *Chandra Pradhan* v. *Gopi Mohan Shaha*, I. L. R., 14 Calc., 385. But when the proceedings were postponed on the consent of the parties, a further application for the execution of the decree, which was for less than Rs. 500, made after a delay of two months, and after a lapse of more than three years from the date of passing the decree, was held to be barred. (*Ram Sahai* v. *Dodraj Mahto*, 20 W. R, 395.) And in *Ram Sundra Sanyal* v. *Gopeshar Mustafi* (I. L. R., 3 Calc., 716); the ruling in the case of *Pyaru Tuhobildarini*, was not followed because the decree-holder applied more than three years after his first application for the attachment not of the same land, as he had previously sought to execute his decree against, but for the attachment of other land belonging to the judgment-debtor.

Computation of value of decree.—The words "inclusive of costs" in this article set aside the ruling of the High Court in the case of *Kadambini Debi* v. *Kailash Chandra Pal* (I. L. R., 6 Calc., 554), in which it was laid down that the costs of appeals in execution-proceedings should not be added to the amount of the decree in calculating whether it amounted to more than Rs. 500. (But see *Bell Campbell* v. *Abdul Hak*, 6 W. R., Act X, 8.)

APPENDICES.

Appendix I.

RULES UNDER THE BENGAL TENANCY ACT

MADE BY THE

LOCAL GOVERNMENT.

NOTIFICATION.

BENGAL TENANCY ACT.

The 21st December, 1885.—Under sub-section 5, section 190 of the Bengal Tenancy Act (VIII of 1885), the following Rules are published for general information.

A. P. MACDONNELL,
Secy. to the Govt. of Bengal.

Rules under the Bengal Tenancy Act (Act No. VIII of 1885).

CHAPTER I.—GENERAL.

Section 189.*

1. In carrying out the following rules, Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII, 1885.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of

* These references are in all cases to the sections of the Bengal Tenancy Act (Act VIII, 1885).

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any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

The words "*except where otherwise provided for by law or by these rules*," refer *inter alia* to decisions in proceedings of the nature referred to in Rules 27 to 32, Chapter VI, *post*, which are appealable to the Special Judge. Executive orders of Revenue-officers are, under this rule, subject to the supervision and control of the Board of Revenue, where not otherwise specially provided for by law or by these rules.

The Board of Revenue have issued the following instructions under this rule:—

"Under this rule, Assistant Superintendents of the Survey Department appointed to be Revenue-officers are declared to be subordinate to Deputy Superintendents of the Survey Department appointed to be Revenue-officers. Assistant Settlement-officers are declared to be subordinate to Settlement-officers, and Settlement-officers are declared to be subordinate to the Director of Land Records or to the Commissioner, or Collector, as the Board shall in each case direct."

The Director of Land Records is to manage or supervise all settlements in which the agency of the professional Survey Department is employed, or which are made under the Bengal Tenancy Act, and his services are to be available for other settlements at the discretion of the Board. He is to exercise, in respect of all these settlements, the powers of a Commissioner save in matters in which power is by law vested in the Commissioner.

As a central authority, he is to be in immediate communication with the Board and be guided by their instructions: as a local authority, he is to examine the details of all important settlements on the spot, and direct the Settlement-officers upon all points of uncertainty or difficulty.

The powers exercisable by the Commissioner of sanctioning rates and confirming settlements may be exercised by the Director of Land Records, as regards settlements under his control. (Board of Revenue's Settlement Manual, 1888, Chapter X, p. 24.)

3. Where no other mode of service of notice is prescribed by the Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, if the notice is addressed to only one person; and if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served by proclamation and beat of drum, and by posting it in the presence of not less than two persons in some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid.

This rule prescribes the mode of service of all notices, for which special provision is not made in Chapter V, *post*.

CHAPTER II.—STAPLE FOOD-CROPS AND PRICE-LISTS.

1. *Section* 39 (1).—The local areas under this section shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area, shall be that at which prices shall be recorded.

2. *Section* 39 (7).—The Collector, after such enquiry into the relative extent to which particular food-crops are grown in his district, as he may think necessary, shall cause a notice to be affixed in his office and in the sub-divisional office, specifying the food-crop or food-crops which in his opinion is or are most extensively grown in each local area. The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands; and shall fix a day, not being later than 15 days after the publication of such notice, on which objections will be taken into consideration. On the day so fixed, the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice, and shall report his opinion thereon to the Board of Revenue. The Board of Revenue shall submit the Collector's opinion to the Local Government, with such remarks as may seem to them necessary. The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

The staple food-crops and local areas determined by the Local Government were notified by Government notification of May 5th, 1886. This was amended by Government notification of May 23rd, 1888, which will be found printed in Schedule II appended to these rules.

The provision that "the notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands," is intended to obviate the difficulty in effecting enhancements, which might arise if two or more crops were declared to be staple food-crops for the same kind of land in the same local area, and their prices were to rise or fall in different ratios, or the price of one were to rise, while that of the other fell.

3. Price-lists of staple food-crops shall be prepared on one market-day in the month at intervals of not less than 20 days. This market-day shall be selected by the Collector, subject to the control of the Board of Revenue.

This rule was substituted for Rule 3 originally drawn up, which prescribed that the price-lists should be submitted fortnightly, by Government notification of May 23rd, 1888. It was determined to prepare the price-lists monthly instead of fortnightly in order to ensure greater accuracy. A statement showing the market-days selected by the Collectors and approved of by the Board of Revenue was circulated by Board's No. 874A of the 7th August, 1888. It will be found appended to these rules.

4. The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to

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which the price-list refers on the day selected under the last preceding rule.

This rule was substituted for the previous Rule 4 by Government notification of May 23rd, 1888.

Board's Instructions.

Under Rule 4, the price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the day prescribed in Rule 3 of the rules issued by Government—

(*a*) The price recorded should be the average of the prices of the different qualities of the staple crop.

(*b*) The price should always be given in seers of 80 tolahs standard weight per rupee.

(*c*) Care should be taken that the price of the staple crops *grown* in the locality is taken into account and *not* of those imported.

(*d*) When rice is the staple, the price to be recorded is the average of the common qualities of husked rice (*mota chaul*) as distinguished from paddy, consumed for the time being by the middle and poorer classes.

(*e*) The average price of the various kinds of *aman* should be shown throughout the year, and that of *aus* separately during the months in which it is sold.

(*f*) The prices of *old* and *new* crop should be shown separately when both are being sold at the mart.

5. Price-lists shall ordinarily be prepared by a gazetted officer, not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector, with the sanction of the Commissioner, may authorize a canoongoe to prepare the lists.

6. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(*a*)—the date of his visit to the mart, at which prices are to be recorded;

(*b*)—the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

Board's Instructions.

Under Rule 6 every officer charged with the preparation of price-lists shall keep a record showing as far as practicable—

(*a*) The date of his visit to the mart at which prices are to be recorded.

(*b*) The names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

(*c*) The record prescribed to be kept up with the officer charged with the preparation of price-lists under this rule should also contain entries showing the vernacular names of the description of rice and the qualities of the other staples selected from time to time, so as to afford a basis for comparison with the qualities and prices which may be recorded at any future time, and also in order that, whenever a change occurs in the officers charged with the preparation of these lists, the new officer may have the means of ascertaining the qualities of the staple selected by his predecessor.

7. When price-lists are prepared at the sudder sub-division by an officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-Divisional Officer, they shall be submitted to the Covenanted Deputy Collector, or a Deputy Collector specially nominated by the Collector for the purpose, or Sub-Divisional Officer, as the case may

be. Such officer shall scrutinize the lists; he may call for explanations and cause manifest errors to be corrected; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

8. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or Sub-divisional office, and at every police-station and munsifi in the local area.

Board's Instructions.

Under Rule 8 the price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or Sub-divisional office, and at every police-station and munsifi in the local area.

The lists shall be published under this rule in the form subjoined :—

Price-list for month of 188 *for local area* sub-division district , is published under clause 3, section 39 of the Bengal Tenancy Act, VIII of 1885. Any objections which any landlord or tenant of the aforesaid local area may have to any entry in this list should be presented to the Collector in writing within a month from the date of its publication :—

Staple food-crop.	Number of seers of 80 tolahs sold per rupee.	REMARKS.

District——

Sub-division——

Collectorate——

Dated——188 .

Signature of the officer preparing the list

Rank——

9. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections.

Under section 39, sub-section (3), any landlord or tenant of land within the local area may make an objection in writing to the lists within one month of the expiry of the term of publication. The lists therefore cannot be submitted to the Board of Revenue until at least five weeks after the date of their first publication.

Board's Instructions.

Under Rule 9, after the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions

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of the officers who prepared and countersigned them, and of the Collector, on such objections.

(*a*) The lists shall be submitted to the Board in the following form :—

Price-list for the month of _____ 188 .

District _____

Local area _____

Mart _____

Staple food-crop or crops.	No. of seers of 80 s. w. per rupee.	Substance of objections* if any.	Opinions of the officer who prepared the list and of the officer who examined it under Rule 7, and of the Collector, on such objection.	REMARKS.

Signature of Officer who examined the list under Rule 7 _____

Rank _____

Date _____

Signature of Officer who prepared the list _____

Rank _____

Date _____

* Any objections made to this list must be forwarded with it.

(*b*) Whatever the dates fixed for recording prices in local markets may be, the lists should be submitted to the Board of Revenue immediately after the expiry of one month from the date of their publication in the mart to which they refer.

(*c*) In submitting the lists to the Board, the recording officer should invariably explain in the column of remarks causes of variation in prices quoted during the period under report as compared with the last preceding return. The Collector should, after satisfying himself as to the correctness of the statement, initial it. The Collector should, in submitting the lists for the whole district, explain any marked difference between prices ruling in the several local areas of his district.

CHAPTER III.—LANDLORDS' IMPROVEMENTS.

1. *Section* 80.—An application for the registration of a landlord's improvement may be presented to the Collector of the district or to the officer in charge of the sub-division in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be specially appointed by the Government to receive such application. It shall, as far as practicable, be in the form specified in Schedule I appended to these rules.

2. The officer receiving the application may, if he thinks fit, require the applicant to present as many copies of the application as there are tenants mentioned in column 7 of the application, or as there are villages mentioned in column 2, and he may, as the case may be, either forward by registered letter copies to the tenants whose names are specified, or may give notice to the tenants by causing a copy to be fixed up in the presence of not less than two persons in some conspicuous place in every such village. In either case he shall fix a date for hearing objections to the application, and shall cause that date to be notified to the parties concerned, either by entering it in the copies forwarded by registered letter or by proclaiming it by beat of drum, and by posting, in the presence of not less than two persons, a notice declaring it in each village. The expenses of such service shall be borne by the applicant for registration.

3. The officer may make over the application to any of his subordinates, not being below the rank of a canoongoe, for local enquiry and report, and shall, in that case, fix a date for hearing the report, and shall cause such date to be notified to the parties concerned in the manner set forth in Rule 2. The enquiry shall be limited to the ascertainment of the fact whether the alleged improvement is of such a nature as to come within the meaning of section 76 (2), Bengal Tenancy Act, or not.

"The travelling allowance of officers deputed under this rule should be borne by Government, who pays the salary of the officers. The officers usually deputed for the work will be Sub-Deputy Collectors and Canoongoes, and it will be remembered that they are only entitled to travelling allowance in special cases. (Board of Revenue's No. 525A of the 10th August, 1887, to the Commissioner of Burdwan.")

4. On the date so fixed, or on any date to which the proceedings may be adjourned, the officer shall hear summarily such of the parties and their witnesses as may attend, and shall consider any report submitted to him under Rule 3. He shall then decide whether the work is an improvement as defined in section 76 (2), Bengal Tenancy Act, and whether the landlord is entitled to register it, and shall accordingly order it to be registered or refuse registration.

5. Nothing hereinbefore contained shall preclude the officer receiving the application from holding a local enquiry, in person, and from ordering the improvement to be registered, or refusing registration in accordance with the result of the enquiry so held.

6. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect until confirmed by the Collector of the district.

7. *Section* 81 (1).—Evidence relating to any improvement under this sub-section shall be recorded by the Revenue-officers specified in Rule 1 of this Chapter, who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Civil Procedure Code.

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CHAPTER IV.—RECORD OF PROPRIETORS' PRIVATE LANDS.

1. *Section* 118.—Applications under this section may be made to the Collector of the district, or to the officer in charge of the sub-division in which the land in question is situated, or to any Assistant or Deputy Collector specially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

2. The application shall be signed by the party making it, and shall contain the following particulars so far as the applicant is able to furnish them :—

(*a*) The name, towji number, and Government revenue of the estate.

(*b*) The names of the registered proprietors, and the share held by each.

(*c*) The specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known.

(*d*) The names of the tenants (if any) in occupation of each such plot.

(*e*) Grounds of the application.

3. On receipt of the application, the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

4. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the officer shall order the lands to be measured, and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition-cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

CHAPTER V.—SERVICE OF NOTICES.

1. *Sections* 12, 13 *and* 15.—Notices under these sections shall contain, so far as may be possible, the particulars given in the forms specified in Schedule I, and shall be served on the landlord or his agent, or, where two or more persons are joint landlords, on their common agent referred to in section 188, or on their common manager appointed under section 93, as the case may be, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office, if any; and if there be no village office, by fixing it up in the the presence of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act to the person or persons to whom, immediately preceding the transfer, the rent had ordinarily been

paid. When notice is served personally, the landlord's fee shall be tendered with the notice. If in cases of personal service a receipt cannot be obtained for the fee from the landlord or his agent, and in all cases when the notice is not served personally, the fee shall be held in deposit by the Collector until applied for by the person or persons authorized to receive it.

The Board of Revenue have issued the following instructions under this rule:—

"It has been decided by Government that registration officers are to send the landlord's fee to the Collectors (including sub-divisional officers under the term) and not to the Treasury direct. It will generally be apparent on the face of the notice accompanying the fee whether the fee can be tendered personally or not, and the Collector, or some gazetted officer of his establishment, will therefore decide at once whether the fee is to go into deposit in the first instance, or is to be made over to the Nazir to be tendered to the landlord. It is important to guard against the needless accumulation of fees in the hands of the Nazir and his peons.

"All deposits of landlords' fees must be treated exactly like any other revenue deposit, and are subject to the usual rules for the repayment of such deposits."

The Board of Revenue have further approved of a proposal that if there are joint landlords and some of them are willing and others are not, to accept the landlord's fee, the fee should be placed in revenue deposit in the names of the joint landlords as zamindar of such and such an estate. Similarly, if the amount to which each joint landlord is entitled is not known, because they hold jointly and so forth, the deposit should be made on account of the zamindars of such an estate without specifying their names (Board of Revenue's No. 201A of May 6th, 1886, to the Commissioner of Rajshahye)

Postage and Postal Registration Charges.

The Collector of the 24-Parganas having enquired who should pay the postage and registration charges for sending notices under section 12 of the Tenancy Act to landlords, and whether a process-fee should be charged for serving such notices in cases of transfer of rights in holdings within the Panchannogram Government estate, the Board of Revenue, in reply to his first question, observed that "if the transferor cannot point out his landlord so as to enable the notice to be served on him, or his agent, or at his office, the notice must be served by affixing it on some conspicuous place on the tenure itself, and also by registered letter on the landlord. The fee for such service is 12 annas in addition to any cost actually incurred for railway fare, ferry toll, and the like. Though the cost of postal registration is not actually specified in Rule 3 of Chapter VII of the Tenancy Act rules, it is evidently a charge of a similar kind to those specified in the rule, and the levy of it should be governed by the same principle. The registration-fee should therefore be levied from the person at whose instance the notice is issued. As the form of notice requires the residence of the landlord to be specified, there would appear to be no difficulty in sending the notice by post" In reply to the Collector's second question relating to the transfer of rights in holdings in Panchannogram, the Board replied that they saw no reason why the landlord's fee should not be realised in each case; but as no peon was employed or expense incurred, the process fee should not be levied. (Board of Revenue's No. 278A of the 15th April, 1886, to the Commissioner of the Presidency Division.)

Subsequently, however, in reply to another reference, the Board of Revenue observed that "notices by registered letter need only be sent in cases in which there are plural landlords, who have no common manager and there is no village office of the landlords upon the tenure. It may be presumed that such cases will not often occur, and the Board do not think that it would be reasonable to require the transferor

to deposit the cost of a registered letter in the Registrar's office when it is quite uncertain whether any registered letter will be sent or not. The Board, therefore, thinks that in such cases the cost must be borne by Government. It must be taken against the fee charged for the issue of the process, and no separate charge on this account must be made in the Registrar's office. (Board of Revenue's No. 781A of the 13th December, 1887, to the Commissioner of the Presidency Division.)

One process fee to be charged when notice is sent by registered letter.

In reply to a reference from Government, the Board of Revenue remarked that it was not correct to say that Rule 3, Chapter V, required "that when a number of landlords resided in the same village, a copy of the notice should be sent by registered letter to each of them. The rule only says that a copy is to be sent to the person or persons to whom the rent was previously paid. The object of the rule is to ensure that the landlord or landlords shall have notice of the transfer, and it is for the officer who sends the notice to decide whether this requires one or more copies of the notice to be sent. But if it is necessary to send by post more than one copy of the notice whether to the same village or to different villages, these are not different notices, but different copies of the same notice, and the fee charged should be 12 annas in addition to the actual cost of registration and postage." (Board of Revenue's No. 162A of 26th February, 1886, to the Secretary, Government of Bengal.) The Board of Revenue subsequently issued the following circular on this subject: "The attention of Collectors and other Revenue-officers is drawn to the procedure under clause 1, Chapter V of the Rules made by the Government of Bengal under the Tenancy Act by which, when there is more than one landlord and no common agent or common manager has been appointed, it is not necessary to serve separate notices upon each landlord, but a single notice, to be served in the manner prescribed in the rule, is sufficient." (Board of Revenue's C. O. No. 9 of July, 1888.)

Procedure of Registration Officers under this rule.

The Inspector General of Registration has issued the following circular with reference to this rule:—"When two or more persons are landlords, whether joint or not, and have no common agent or manager, only one notice should be issued and a single process fee levied. The notice should be served by being posted on the landlord's village office, if any, or if there be no village office, by fixing it up in the presence of not less than two persons on some conspicuous place on the tenure, and a copy of the notice should be forwarded by post in a registered letter to the person or persons to whom immediately preceding the transfer the rent had ordinarily been paid—*vide* Rule (6), Appendix B, of the Rules for the registration of documents, under the Tenancy Act, VIII of 1885.

"Postal charges for sending copies of notices under section 12 of the Bengal Tenancy Act to landlords will, under Government Order No. 9 dated the 12th instant, be met from, and not added to, the process fee." (Inspector-General of Registration's Circular No. 3 of the 18th February, 1889.)

Disposal of notices under section 12 after service.

The Board of Revenue have issued the following instructions with regard to the disposal of notices under section 12 after service:—

"A question having arisen as to whether the notices sent to Collectors under section 12 of the Tenancy Act by registering officers should remain in the Collector's office, after service, or should be returned to the Registering Officer, the Board have to point out to all Collectors that it is not intended that any return of the service of a notice under the section abovementioned should be made to the Registration Office from which the notice is received. The duty of the Registering Officer is completed when he has sent the notice and the prescribed fees to the Collector, and it is unnecessary to inform the former how the notice has been served" (Board of Revenue's C. O No. 7 of August, 1888.)

2. *Section* 45.—Notice to a raiyat to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure; and shall be subject to the same process-fee.

3. *Section* 46 (2).—The agreement under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

4. *Section* 46 (4).—The notice under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

5. *Section* 63 (2).—In cases (*a*), (*b*) and (*d*) of section 61 herein referred to, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

6. *Section* 72 (2).—The general notice referred to in this sub-section may be published by the transferee by fixing up a written notice to the tenants in the village office, or in the presence of not less than two persons on some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process-fee prescribed by the High Court.

7. *Section* 73.—Notice under this section shall be in writing, and shall be delivered to the landlord or his agent, or, where two or more persons are joint landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54.

8. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

9. *Section* 86 (2) *and* (4).—If the raiyat elect to proceed under the second sub-section of this section, he may personally serve a written notice

of his intention to surrender on his landlord; but if he elect to proceed under the 4th sub-section of the section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

10. *Section* 87.—A notice of the tenant's abandonment of his holding under sub-section (2) of this section shall be in the form specified in Schedule I, shall be published by beat of drum upon the holding alleged to be abandoned, and a copy thereof shall be affixed, in the presence of not less than two witnesses, to some dwelling-house, or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

The fee prescribed by this rule, must be paid when Government is landlord and an estate is managed *khas*. In this case the fee must be debited to the management grant. (Board of Revenue's No. 167A of 19th March, 1887, to the Commissioner of Burdwan.)

11. *Section* 155.—Notice to the tenant under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

CHAPTER VI.—RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Powers of Revenue-officers. Section 189.

1. Revenue-officers appointed to be Settlement-officers or Assistant Settlement-officers for the purpose of making surveys, records-of-rights, settlement of rents, determination of proprietors' private lands, and such like proceedings, or any one or more of them, under the Tenancy Act, are hereby vested with all powers exercised by a Civil Court in the trial of suits, and with the powers mentioned in section 189 (1), (*a*), (*b*) and (*c*), of the Tenancy Act, VIII of 1885.

2. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules are hereby declared to be Revenue-officers for the purposes of performing any duty imposed upon them by these rules, or by instructions, consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in section 189 (1) (*b*), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act.

Rule (1).— Among the powers conferred on officers appointed to be Settlement and Assistant Settlement-officers by this rule, is that of summoning witnesses. This power may be exercised in any proceeding and in the discharge of any duty imposed by the Act or these rules, and is not confined to proceedings in which the Revenue-officer is acting as a Revenue or Civil Court.

Rule (2).—Under this rule, Assistant Superintendents of the Survey Department can exercise such of the powers of a Superintendent of Survey under the Bengal Tenancy Act as may be delegated to them by the Collector, Settlement-officer, or Superintendent of Survey, as the case may be.

Procedure for Cadastral Survey and Record-of-Rights.

3. The following processes will ordinarily be comprised in a cadastral survey, record-of-rights, and settlement of rents :—

I.—Demarcation of boundaries.

II.—Measurement.

III.—Testing of measurement.

IV.—Record of rents and rights.

V.—Determination of fair rents on application, and, in certain cases, without application, of parties.

According to the Dictionnaire des Dictionnaires, the word "cadastral" is derived from the mediæval Latin word *capitastrum*, "a public register containing the quantity and value of landed property, names of owners, &c., which served for the assessment of the tax on property." According to others, the word is derived from the French verb "*cadrer*," to square or correspond with, all objects on a large scale or plan being shown in their true positions and proportion, whereas in a topographical map certain features must be exaggerated for sake of distinctness. (*Ocean Highways, November*, 1872.)

Demarcation of Boundaries before Cadastral Survey.

4. The demarcation of village boundaries shall be carried out in accordance with the definition of a village given in section 3 (10), and the boundary according to possession, where different from that demarcated as above, shall also be shown on the map.

Board's Instruction.

"Detailed instructions for the demarcation of boundaries of villages, estates, and tenures will be found in the Board's Survey Manual."

5. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the Revenue-officer considers it necessary to define by pillars the boundaries of estates or tenures or of lands which have been the subject of dispute.

Board's Instruction.

"Instructions for erection of pillars will be found in the Board's Survey Manual."

Measurement.

6. A field map of every village shall be prepared. It shall show the boundaries of every field separately assessed to rent, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

7. A field register or khasrah shall be prepared at the time of survey in the following form,* or such similar form as the Board of Revenue may direct.

8. In preparing the khasrah and khatian, officers shall be guided by such instructions, consistent with these rules, as the Board of Revenue may issue for the purpose for giving effect to these rules.

* See next page.

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FORM OF KHASRAH.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
FIELD	Name of estate or share of estate	Name of proprietor, and landlord, with parentage, caste, and residence	Name of raiyat, father's name, caste, and residence	Name of under-raiyat, father's name, caste, and residence	Area in bighas of square yards according to which measurement has been made	Area in village bigha of hâths to the laggi	Method of irrigation	Non irrigated	CROPPED AREA. Bhadoi: Crop, Area; Rabi: Crop, Area; Agani: Crop, Area; Dofasli area	DETAILS OF UNCROPPED LAND: Class of lands, Area	RATE OF RENT OF RAIYAT: According to zamindar, According to raiyat, According to patwari	RATE OF RENT OF UNDER-RAIYAT: According to raiyat, According to under-raiyat	Class of soils	REMARKS
a, b											a, b, c	a, b		
Number, Boundaries.														

9. Khatians or abstracts of the particulars of every raiyat's and under raiyat's holding, and so far as may be of the tenure of every tenure holder and under-tenure-holder, shall be prepared in the following form,* or such similar form as the Board of Revenue may prescribe.

* See next page.

FORM OF KHATIAN.

Khatian of A. B., son of C. D., of mauzah , pargana , mahal
district , the property of , proprietors

1	2	3	4	5	6	7	8	9	10		11		12			13	14	15	16	17	18	19	20
Name of landlord.					RENT-PAYING AREA IN				PRESENT RENT							Fair rent fixed by Revenue-officer (if any).	Class of holding and, in case of non-occupancy-raiyats, length of possession.	Mode in which rent has been fixed, i. e., whether by contract, order of the Court, or otherwise.	If the rent is gradually increasing, the time at which and the steps by which it increases.	The special conditions and incidents of the tenancy (if any).	Enumeration of column, the entries in which have been the subject of dispute.	Enumeration of column, the entries in which have not been the subject of dispute.	REMARKS.
Serial number of raiyat.									According to zamindar.		According to raiyat.		As ascertained by Revenue-officer.										
Name of raiyat with parent's name, caste, and residence.			Name of under-raiyat with parent's name, caste, and residence, and number of under-raiyat's khatian.	KHASRAH NUMBER OF FIELDS AND BOUNDARIES THEREOF.	Bighas, according to which measurement was made of square yards			Total area in village bighas.	Rent. (a)	Cesses. (b)	Rent. (a)	Cesses. (b)	Rent. (a)	Cesses. (b)	Total. (c)								
				Number.	Cultivated.																		
				Boundaries.	Not cultivated.																		
					Total.																		

Note.—The heading of columns 10 and 11 will, for khatians of under-raiyats, be changed to "according to raiyat" and "according to under-raiyat," respectively. In the case of a tenure-holder's *khatian*, the heading of column 11 will be "according to tenure-holder;" and in the case of under-tenure-holders' *khatians*, the heading of columns 10 and 11 will be altered to "according to tenure-holder" and "according to under-tenure-holder," respectively.

Board's Instruction.

"The instructions for the preparation of khasrahs and khatians under Rules 8 and 9 will be found in the Board's Survey Manual."

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Record-of-Rights.

10. The record-of-rights shall consist of, and be contained in—

I.—The khewat.

II.—The khatian.

Rights of Proprietors.

11. The khewat shall contain a record of the character and extent of proprietary interests.

12. It shall be prepared in the following manner:—

(*a.*)—An extract from the Collector's Registers A, B, C, D, framed under the Land-Registration Act, VII (B.C.) of 1876, containing the names, extent, and character of the interests of proprietors of all revenue-paying and revenue-free lands comprised within the mauzah, shall be supplied by the Collector of the district to the Revenue officer on the latter's application.

(*b.*)—If the Revenue-officer finds that the proprietary interests existing in the village are in accordance with the entries regarding extent and character of proprietary interests as given in the Collector's registers, he shall have the entries copied into the khewat, which will form the record of proprietary and proprietary mortgagees' interests for the purposes of the record-of-rights under the Tenancy Act. The extracts from the Collector's land-revenue registers will also show the names and proprietary interests of managers and mortgagees of all revenue-free property within the village.

(*c.*)—If any person claiming as proprietor or as assignee or mortgagee of an alleged proprietor deny the accuracy of the khewat, as copied from the Collector's registers, the Revenue-officer shall refer him to the Collector of the district, and shall also report the fact to the Collector in order that the action may, if necessary, be taken under the Land-Registration Act, to compel registration of the proprietor's name.

(*d.*)—In any proceeding under Chapter X, the Revenue-officer may, at his discretion, recognise as proprietor the person in possession of the land, pending the registration of his name and interest under the Land-Registration Act.

Board's Instruction.

"Under this rule, a record of proprietary rights is to be prepared, which must in general be in accordance with the entries in the Collector's registers prepared under the Land Registration Act; but inasmuch as it is known that the Collectors' registers do not in many cases represent the existing facts, and inasmuch as, if the Settlement-officer were to decline to recognise as proprietor every person whose name and interest have not been duly registered under the Land-Registration Act, it is possible that his work might be brought to a standstill, hence discretion is allowed to the Settlement-officer under clause (*d*) to recognise a claimant of proprietary interests as proprietor, though his name may not have been registered. This discretion should only be exercised when there is practically no doubt that the claimant of proprietary right is really the proprietor. But though a non-registered proprietor may be thus recognised, such recognition will not dispense with the necessity for registration. All cases of such recognition of non-registered proprietors should be at once reported to the Collector, who should take immediate action to compel registration. The khewat or record of proprietary rights cannot be finally published till such registration

has been completed, but the record-of-rights of tenure-holders, raiyats, and under-raiyats may be published without awaiting such registration. The forms in which the records of proprietary rights are to be prepared are given in Nos. 16 to 18, Appendix C."

Lakhirajdars.—Owners of revenue-free property are proprietors under the definition contained in section 3 (1 & 2), and are to be treated as such in the preparation of the record-of-rights.

Proprietor's private lands,—Nij-jote, Sir, Zerat or Khámár.

13. Only land which is proprietor's private land, as defined in section 120 of the Tenancy Act, will be entered as such. Land which, though cultivated by the proprietor, is not proprietor's private land within the meaning of the law, will be entered thus—"Cultivated by the proprietor, but not private land." Separate khatians will be prepared for such land and for "proprietor's private land."

It is to be remembered that it is cultivation by the proprietor for twelve years or more which makes any land *sir*, and not cultivation by a thikadar or ijaradar, who is a tenure-holder and not a proprietor.

Rights of Tenure-holders, Raiyats and Under-raiyats.

14. The record of tenure-holders', raiyats' and under-raiyats' rights shall be prepared in the following manner :—

15. As soon as possible after the completion of the field measurements of each village, the following papers shall be made over to the Revenue-officer :—

(1) The map. | (2) The amin's khasrah. | (3) The khatian.

16. On receipt of these papers, the Revenue-officer shall issue a notification, which may be in the form given in Schedule I attached to these rules, fixing a day, which shall not be less than one month from the date of issue of the notification, on which he will be present at some place to be specified, at or near the village, and after which applications for the settlement of fair rents will not be received. The notification shall further state that on the day so fixed, or on any other day to which the proceedings may be adjourned, the Revenue-officer will proceed to record rents when the circumstances are such as are specified in section 104*(1); or to settle fair and equitable rents on the application of either party; or on the Revenue-officer's own motion when the case falls under section 104 (2); and it shall require all parties interested in the subject-matter of the enquiry to attend at the time and place specified, with such evidence as they have to offer in connection with the proceedings. Such notice shall be forwarded to the Sub-Divisional Officer and the Munsif within whose jurisdiction the land is situated to be affixed in their respective Courts, and it shall also be published by proclamation and beat of drum, and fixed up in the presence of not less than two persons in some conspicuous place in the village to which it refers.

17. The Revenue-officer may also, if he deem fit, take such additional measures, under Rule 1 of this chapter, as may be desirable, to procure the attendance, at the place specified in the notice to be issued under the last

preceding rule, of the under-raiyats, raiyats, landlords, tenure-holders, and proprietors, or their authorized agents.

18. The record-of-rights of tenure-holders and under-tenure-holders shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not being inconsistent with these rules, as the Board of Revenue may direct. The record-of-rights of under-raiyats shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not inconsistent with these rules, as the Board of Revenue may direct.

Board's Instruction.

"The record of the rights of tenure-holders and under-tenure-holders should be prepared in the same manner, and form, as the record of raiyats' rights. where the tenure is of a raiyati character, such as that of a head raiyat who, though a tenure-holder, cultivates part of his tenancy himself, and in the same manner and in similar form to the record of proprietary interests, where the tenure is of a proprietary character, such as that of a thikadar, ijaradar, or other proprietary assignee. See specimen form No. 19, Appendix C."

19. The record of raiyats' rights shall be prepared in the following manner.

20. On the date specified in the notice to be issued under Rule 16, or on any other date to which the proceedings may be adjourned, the entries which the amin has recorded in each tenant's khatian at the time of measurement shall be read out in presence of such of the interested parties as are in attendance. If the correctness of the entries recorded by the amin be disputed, the Revenue-officer shall settle the dispute by local enquiry or otherwise: provided that if the correctness of the measurement is called in question, and a fresh measurement demanded, the Revenue-officer may require the costs of the remeasurement to be deposited. If the remeasurement show the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Board's Instruction.

"It is of great importance that the parties should be made thoroughly to understand the entries made in the khatians against them, and that their objections should be patiently and carefully enquired into. In order that this may be the more thoroughly done, the Settlement-officer may depute a canungoe, or trustworthy subordinate of similar rank to the village to explain the entries and note objections made to them before he visits himself and before he has the entries read out under this rule. One of the best safeguards for the accuracy of the work is the admission of the correctness of the entries affecting them by the parties interested. Without such assent all other tests are of comparatively little value."

21. The Revenue-officer shall ascertain what raiyats claim the right to hold at fixed rates, explaining, as far as may be necessary, the provisions of the Act in this respect. If the right claimed is disputed by the landlord, the Revenue-officer shall call on the claimants for proof of such right.

22. The Revenue-officer shall ascertain which of the raiyats are settled raiyats or occupancy-raiyats, as the case may be, and shall record them as such in column 14 of the khatian.

23. The Revenue-officer shall ascertain what raiyats are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to produce a statement showing the names of the raiyats alleged by him to be non-occupancy-raiyats. On production of such statement, the Revenue-officer shall explain to the raiyats whose names are entered in the statement, and who have not already been recorded as occupancy or settled raiyats, the nature of the presumption raised by section 20 (7). If, after such explanation, a raiyat admits himself to be a non-occupancy-raiyat, he shall be recorded as such. If he does not admit himself to be a non-occupancy-raiyat, the Revenue-officer shall call on the landlord to prove the allegation made by him in regard to such raiyat.

24. Abwábs shall not be recorded with, nor entered as forming part of, the existing rent. Cesses which are authorised by law shall be recorded in column 12 (*b*).

25. The Revenue-officer, on the day fixed by the notice issued under Rule 16, shall, as far as may be convenient, first proceed to record rents under section 104, clause 1. When neither the landlord nor the tenant has applied to have a fair and equitable rent fixed, and when it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, the Revenue-officer shall summarily ascertain the tenant's present rent, and record it in column 12 of the *khatian* as the rent payable in respect of the land held by the tenant.

26. When all rents to which section 104, sub-section 1, is applicable have been recorded, as far as may be convenient, the Revenue-officer shall proceed to settle rents under sub-sections 2 and 3 of the same section. In settling rents, the existing rent being presumed, under section 104 (sub-section 3), to be fair till the contrary is proved, if the landlord claims an enhancement, he will have to prove the grounds of, and amount of, enhancement; and if a raiyat claims a reduction, he will similarly have to prove the grounds of reduction: Provided that it shall be in the discretion of the Revenue-officer to admit an application made after the period fixed in Rule 16, if it be established to his satisfaction that the delay in making it was not due to any negligence or carelessness on the part of the applicant, and that, if it be not admitted, serious hardship or injustice would accrue to him. The order passed by the Revenue-officer on all such applications shall be final.

The Board of Revenue have issued a circular to the effect that "when an application or petition is made to the Settlement-officer under the preceding rule or during the settlement operations, it should be stamped in accordance with art. 1, Sched. II of the Court-fees, Act VII of 1870," that is to say, it should be stamped with a Court-fee stamp of eight annas. (See art. 1, Cl. (*b*), Sched. II, Act VII of 1870.)

27. If within the period fixed and notified under Rule 16 the landlord applies for the settlement of a fair rent, he shall be considered as plaintiff and the tenant as defendant, and the proceeding shall be dealt with as a suit

under this Act. If within the same period the tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the landlord as defendant, and the proceeding shall be dealt with as a suit under this Act.

28. If it appears that a tenant is holding land in excess of or less than that for which he is paying rent, and if within the period fixed and notified under Rule 16 of this Chapter, neither landlord nor tenant applies for the settlement of a fair rent, or if an application be not admitted under the proviso to Rule 26, the Revenue-officer shall, in accordance with the notice, proceed to fix a fair and equitable rent for the holding under section 104, sub-sections 2 and 3.

29. When a fair and equitable rent has been fixed under the last two preceding rules, it shall be entered in column 13 of the *khatians* as the rent payable in respect of the holding.

30. Where the estate or tenure belongs to, or is managed by, the Government or the Court of Wards, the procedure laid down in the preceding rules for recording or settling rents shall be followed, the Government or the manager of the estate or tenure respectively, as the case may be, being regarded as the landlord.

Board's Instruction.

"Under this rule it will be observed that Settlement-officers in making settlement of rents in Government and Wards' estates are bound by the same rules and must follow the same procedure as in settling rents in private estates. Where then the Court of Wards claims an enhancement in the existing rent, a formal application for settlement of fair rents should be made by an officer duly authorized in that behalf by the manager, and evidence should be recorded in the same way as if the estate were owned by private landlords. The Settlement officer is in such cases bound to settle a fair rent judicially in the same way as in an estate in possession of a private zamindar with due regard to the provisions of the Tenancy Act. But if the estate belongs to Government, and a settlement of land revenue is being made, the Settlement-officer is bound of his own motion to settle a fair rent—*vide* sec. 104 (2), and should himself call for and record any evidence that may be necessary to enable him to ascertain what would be a fair rent, having regard to the grounds of enhancement or reduction of existing rents given in the Tenancy Act for the determination of fair rents. In cases of this class the Settlement-officer should, on behalf of Government, himself call for and record such evidence as may be necessary in order to enable him to ascertain what would be a fair rent, and must not leave it to other parties to produce such evidence before him. The raiyats may be called upon to produce evidence as if they were defendants in such cases, and the proceedings should be conducted as nearly as may be as in a civil suit.

Rents of raiyats.

2. The Tenancy Act gives rules for the assessment of the rent of occupancy-raiyats, and it is believed that these will be found clear and complete. The existing rent must, under sec 101, be considered fair and equitable until the contrary is proved; the grounds on which it may be increased are stated in secs. 30 and 52; those on which a reduction can be claimed in 38 and 52. In the former case, the Settlement-officer is not bound by the limit of 2 annas in the rupee specified in sec. 29 of the Act, but he is at liberty to enhance the rent up to any sum to which a Civil Court would enhance it in a regular suit. The provisions of the Act as to the assessment of rent must be observed in all settlement-proceedings, whether taken under Chap. X or under the Regulations.

The work of ascertaining fair and equitable rates of rent is in its nature difficult, and too much care cannot be taken in its performance. Every mistake made must be permanently injurious either to the interests of the revenue or to those of the raiyat.

3. The Act does not give precise rules for the assessment of the rent of non-occupancy-raiyats, but the provisions of sec. 46 (9) should be observed, that in determining what is fair and equitable, regard should be had to the rents generally paid by raiyats for land of a similar description, and with like advantages in the same village. It will seldom be expedient to introduce a difference between the rates of rent paid by occupancy and non-occupancy-raiyats, respectively, where none at present exists."

31. With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord, in the same village or estate, may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord: Provided that if at any time it shall appear to the Revenue-officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such other order, in accordance with the Civil Procedure Code, for the joint or separate disposal of the application, as he may think fit.

32. In proceedings under sec. 106, when a dispute arises, before the final publication of the record, regarding the correctness of an entry (not being an entry of rents settled under Chap. X) or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue-officer, be effected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff, and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection, which may in that case be heard and decided as a suit *ex parte* under the Tenancy Act.

Publication of the Record-of-Rights.

33. When the record-of-rights has been prepared in the manner described in Rules 20 to 32, the Revenue-officer shall cause a draft of the *khewat* and *khatian*, or, when more convenient, of each separately, to be posted, for the period of one month, at the landlord's village office, if there be one, and if there be none, then in the presence of not less than two persons in some conspicuous place in the village, and shall receive and consider any objections which may be made to any entry therein during this period.

34. When all applications for settling a fair rent have been disposed of, and all disputes of the nature mentioned in Rule 32 have been decided, and all objections of the nature mentioned in Rule 33 have been considered by the Revenue-officer, he shall note in the *khewat* and the appropriate columns

of the *khatian* in regard to each entry what entries have been, and what entries have not been, the subject of dispute. He shall then finally frame the record and cause it to be published by having it posted in the village office, at which the rent is usually paid, or in some conspicuous place in the village.*

Supply of copies of the Record-of-Rights to parties interested.

35. The Revenue-officer, having completed the record, shall cause copies of it to be made, one of which will be made over to the proprietor of the village or, where there are more proprietors than one, to their common agent or common manager, as the case may be, one to the village patwari, if there be a patwari, and one to the Collector or Sub-Divisional Officer.

A copy of the *khatian* relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue-officer.

Final Reports.

36. The Local Government may, if it thinks fit, direct that a final report be written in English for each village and each local area under survey. The report for the village will show—

(*a.*)—The number of tenants of each class.

(*b.*)—The area and classification of the village lands according—(*a*) to survey and settlement; (*b*) to landlord's *jamabandi*, if known.

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* It has been proposed to substitute for the above Rules 33 and 34, the following amended rules. (See *Calcutta Gazette*, March 13, 1889, Pt. I, p. 175.)

33. When the record of rights has been prepared in the manner described in Rules 20 to 32, the Revenue-officer shall cause a draft of the *khewat* and *khatian*, or, when more convenient, of each separately, to be published in the following manner:—

Notice shall be posted up at the landlord's village office, if there be one, and if there be none, then, in the presence of not less than two persons, on some conspicuous place in the village, stating that the records will be published in the village at a place and time to be specified not less than one week from date of such notice, and calling on all persons interested to attend on the date so specified. The Revenue-officer shall either proceed to the place so specified himself, and read the contents of the record in the presence of parties who attend, or he shall depute an officer not below the rank of canoongoe, who shall read out the contents of the record in the presence of so many of the parties as attend, and the Revenue-officer or officer deputed by him, as the case may be, shall at the same time inform the parties who attend that the draft record will be open for inspection in the office of the Revenue-officer for one month. The Revenue-officer shall receive and consider any objection which may be made to any entry during this period.

34. When all applications for settling a fair rent have been disposed of, and all disputes of the nature mentioned in Rule 32 have been decided, and all objections of the nature mentioned in Rule 33 have been considered by the Revenue-officer, he shall note in the *khewat* and the appropriate columns of the *khatian* in regard to each entry what entries have been, and what entries have not been, the subject of dispute. He shall then finally frame the record and cause it to be published by notifying that its contents will be read out in the village at a time and place to be specified, not less than a week from date of such notice, and by reading it out himself or causing it to be read in the village on the date so specified, in the manner prescribed in Rule 33 in the presence of the parties, or of so many of them as attend.

(*c.*)—The rental according to settlement and according to landlord's *jamabandi*, with explanation of increase or decrease, amount of Government revenue, and comparison of rent with revenue.

(*d.*)—The rates of rent prevailing, with history of past enhancements.

(*e.*)—Proximity to markets.

(*f.*)—Facilities for irrigation.

(*g.*)—Village customs, including customs as to payment of village officials.

(*h.*)—Arrangements made for maintenance of records.

(*i.*)—Other matters deserving of notice which have been excluded from the record-of-rights.

The report for the whole area under survey will contain the following particulars :—

I.—General description of the tract.

II.—Its fiscal history.

III.—Statistical results.

IV.—Comparison of condition of tract as regards rentals before and after survey.

V.—Financial results, including approximate division of expenses under the heads—

(*a.*)—Survey.

(*b.*)—Record-of-rights.

(*c.*)—Preparation and distribution of records.

These reports shall not form part of the record-of-rights.

Board's instructions.

In the cases of large surveys and settlements, whether of Government, wards or private estates, a full report and description of the tract under survey under each of the heads mentioned in the preceding rule should be submitted. In cases of petty settlements, a short history of the settlement accompanied by tabular statements given in the appendix, forms Nos. 21 (*a*) to 21 (*c*), will suffice.

Application by Proprietors for Survey and Record-of-Rights.

37. *Section* 103.—Applications under this section shall be made to the Collector of the district.

38. The application shall specify—

(*a.*)—The status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder, and the particulars in respect of which the application is made.

(*b.*)—The number of tenants (so far as the applicant is able to state it) occupying the estate or tenure, or part thereof in respect to which the application is made, the total rent payable by them at the time, and the estimated area covered by the application.

39. If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Act VII (B.C.) of 1876.

40. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

41. The Commissioner may call for further information, or may require the application to be amended.

42. If the Commissioner shall have reason to believe that the number of tenants affected by the application does not exceed 1,000, and that the rent payable by them, at the time the application is made, does not exceed Rs. 25,000, he shall pass an order allowing or rejecting the application; but otherwise he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

43. A Commissioner rejecting an application shall record his reasons for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.

44. When an application is referred to the Board under Rule 42, or in consequence of an appeal under Rule 43, the Board shall pass such orders as it may think fit for allowing or rejecting the application.

45. The Commissioner or the Board, as the case may be, when allowing an application, shall specify the Revenue-officer or officers by whom the record is to be prepared.

46. As soon as an application is allowed, the Collector shall call upon the applicant to deposit the expenses at the rate of 8 annas per acre for the estimated area in respect of which the application has been allowed. If the Collector is unable to estimate the area, he shall calculate the expenses at the rate of Rs. 2 per each tenant. If the amount does not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs. 500, the applicant shall deposit the sum of Rs. 500, and shall give such security as the Collector may require for the balance. The applicant shall, when called upon, from time to time, deposit such further sum as may be necessary for carrying on the operations. On completion of the proceedings any unexpended balance shall be refunded to the applicant.

With reference to this rule, the Board of Revenue has observed that "the amounts mentioned in it were only given as a guide to the Collector in determining what amount should be required as a deposit before proceedings are commenced. The rule goes on to say that the applicant shall, when called upon, from time to time, deposit such further sum as may be necessary. In a petty case an apportionment order under section 111 is evidently uncalled for. If the deposit at the rate of 8 annas per acre would be manifestly insufficient, the applicant may be required to deposit or give security for an additional sum. In estimating the cost of the operation, the pay of the Revenue-officer to frame the record should be charged in accordance with the time for which he is engaged for the work." (Board of Revenue's No. 767A of the 18th December, 1886, to the Commissioner of Burdwan.)

47. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101.

CHAPTER VII.—GENERAL SCALE OF FEES.

1. *Section* 189 (2).—*For Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court-fees' Act), and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

When a Settlement-officer in proceedings under Chapter X settles fair rents under section 104 (2), or decides disputes regarding entries in the record-of-rights (section 106) he acts as a Court, for his decisions have the force of decrees (section 107) and are subject to appeal to the Special Judge and High Court. Hence, in such cases, he acts as a Revenue Court and processes to parties or witnesses he may issue are subject to the fees prescribed by the High Court rules under the Court-fees' Act. Processes issued by Revenue-officers in other cases are subject to the fees prescribed by this and the three following rules.

2. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

3. In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, &c., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

The Board of Revenue have held that under this rule postal charges and charges for the registration of letters containing notices may be levied. (Board's No. 162A of February 26th, 1886, to the address of Government. See note to Rule 1, Chap. V.)

4. If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent must then and there pay demurrage at the rate of 5 annas a day. Unless this demurrage is paid, the peon must decline to wait. No demurrage is to be charged if the delay was not due to the person requiring the process or to his agent.

5. *Section* 61 (2).—*For Deposits of Rent.*—For deposits of rent under section 61 (2), 4 annas for every such deposit of Rs. 25 or less, with an additional 4 annas for every Rs. 25 or part of Rs. 25 in excess: Provided that in no case shall the fee exceed the sum of Rs. 5.

These fees should be paid in Court-fee stamps.

APPDX. I.

CHAP. VII.

6. *Section* 134.—*For Distraint of Crops.*—The following scale of charges is prescribed on account of processes for distraint and sale under the Bengal Tenancy Act :—

(*a.*)—In respect of the warrant of distraint—8 annas.

(*b.*)—In respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day.

(*c.*)—In respect of action taken under section 126 (clause 2) for the reaping, storing, or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

In addition to the charges under clauses (*a*), (*b*), and (*c*) above, railway-fare, boat-hire, and ferry charges will be levied when necessary as under Rule 3 of this chapter.

SCHEDULE I.

Notice under section 12, Act VIII of 1885.

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section 12, Act VIII of 1885. The landlord's fee of Rs. with process-fee of Rs. , is forwarded herewith.

C. D.,
Registering Officer.

To

A. B., *Resident of*

TAKE notice that the transfer of the tenure* specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is tendered to you herewith.

Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Touji number of estate.	Name of estate.	Description of tenure transferred, with village and pergunnah in which situated.	Annual rent of tenure.	Name, father's name, and residence of transferor of tenure.	Name, father's name, and residence of transferee of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.			REMARKS.
								Rs.	A.	P.	

C. D.,
Registering Officer.

Ordered that this notice be served on the above-named landlord.

E. F.,
Collector.

Received a copy of the above-mentioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

Landlord.

APPDX. I.
SCH. I.

Notice under section 18, Act VIII of 1885.

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B, resident of , as required by section 13, Act VIII of 1885. The landlord's fee of Rs. , with process-fee of Rs. , is forwarded herewith.

C. D.,
Judge.

To

A. B., *Resident of*

TAKE notice that the sale of the tenure* specified below, of which you are alleged to be the landlord, has been confirmed, and that the landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8			9
Town number of estate.	Name of estate.	Description of tenure transferred, with village and pergunnah in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	Amount of landlord's fee.			REMARKS.
							Rs	A.	P.	

C. D.,
Judge.

Ordered that this notice be served on the above-named landlord.

E. F.,
Collector.

Received copy of the above-mentioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

A. B.

Notice under section 14, Act VIII of 1885.

In the Court of the *of*

To

THE COLLECTOR OF

IT is hereby notified to you that the tenure,* the particulars of which are entered below, was sold on the date specified below in execution of a decree for arrears of rent due in respect thereof.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9	10
Town number of estate.	Name of estate.	Name of landlord of estate.	Address of landlord.	Description of tenure sold, with village or pergunnah in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose tenure has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	REMARKS.

C. D.,
Judge.

Notice under section 15, Act VIII of 1885.

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., resident of . The landlord's fee of Rs. , with process-fee of Rs. , is deposited herewith for payment to the said A. B.

C. D.,
Tenure-holder.

APPDX. I. SCH. I.

To

A. B., *Resident of*

TAKE notice that I have succeeded to the tenure* specified below, of which you are the landlord. The landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Touji number of estate	Name of estate.	Description of tenure succeeded to, with village and pergunnah in which situated.	Annual rent of tenure	Name father's name and residence of late tenure-holder	Date, if known of deceased tenure-holder's death	Name, father's name, and residence of successor to tenure	Nature of successor's title to succeed	Amount of landlord's fee			Remarks
								Rs	A	P.	

C. D.,
Resident of

Ordered that this notice be served on the above-named A. B.

E. F.,
Collector.

Received copy of the above-mentioned notice and rupees (Rs.), being the landlord's fee specified above.

Stamp, if amount exceeds Rs 20.

A. B.

Application under section 80, Act VIII of 1885.

To

THE COLLECTOR OF

The application of , *son of* , *resident of* , *for registration of an improvement under Section* 80 *of the Bengal Tenancy Act, VIII of* 1885.

1	2	3	4	5	6	7
Name of pergunnah and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land.	Nature of improvement.	By whom executed and at whose expense.	When executed.	Names of tenants benefited, if not more than five in number.

A. B.,
Landlord.

Notice under section 87 of Act VIII of 1885.

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned and that I am about to re-enter upon it accordingly.

Dated } *Landlord.*

Schedule of Property.

Name of village and pergunnah in which situate.	Area and boundaries of holding.	Rent of holding.

APPDX. I. SCH. I.

Form of Notice under Rule 16, Chapter VI, of these Rules.

Notice to the proprietors, tenure-holders, landlords, raiyats, and under-raiyats of—

Village
Pergunnah
Thana
District

Take notice that, under the powers vested in me by the Bengal Tenancy Act, VIII of 1885, and the rules made thereunder, I shall, on the day of 188 , at , proceed to record the rents of all tenants holding or cultivating lands in the above-named village; I shall also, at the said time and place, or at such other time to which the proceedings may be adjourned, proceed, on the application previously made of either landlord or tenant, to settle fair and equitable rents under section 104, sub-sections 2 and 3 of the said Act. Furthermore, notice is given that, should it then appear that any tenant is holding land in excess of or less than that for which he is paying rent, and should neither the landlord nor tenant apply to have a fair rent settled, I shall, in accordance with the said section of the Tenancy Act, proceed of my own motion to settle a fair and equitable rent for such tenant's holding.

No landlord or tenant shall be entitled to present an application for settlement of fair and equitable rents after the above-mentioned date. All applications should therefore be presented to me before the said date.

You are hereby required to attend before me at the above-mentioned time and place, and at any other time and place to which the proceedings may be adjourned, and to produce such evidence, written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-officer.

16.

Khewat (Part I) of Revenue-paying lands, containing the names of the Proprietors, and the extent and character of their interests—See Rule 12, Chapter VI, Tenancy Act Rules, Board's Instructions.

1	2		3	4		5	6						7	8	9	10
Number.	Name of estate or share of		Number in revenue roll.	Names and addresses of the proprietors, managers, and mortgagees of the estate, with the character and extent of each proprietor's, manager's or mortgagee's interest.		Number in Mouzahwar register of the Collectorate.	Area according to present measurement.						Government Revenue of the Estate.	Rulyati Jama according to the present settlement.	Reference to entries made in the intermediate register of the Collectorate.	Remarks.
							In acres.			In bighas of square yards.						
	Estate.	Share of estate.		Name, parentage, and residence.	Character and extent of interest.		Cultivated.	Not cultivated.	Total.	Cultivated.	Not cultivated.	Total.				

17.

Khewat (Part II) of Revenue-free lands, showing lands held exempt from Government revenue in perpetuity (Rent-free land should not be entered in this).

1	2	3				4		5	6					7	8	9	10
Serial number.	Description and character of revenue-free property, whether jagir, altamgah, &c.	Particulars of original grant.				Name, parentage, and residence of the proprietor, manager or mortgagee of the revenue-free land, with the character and extent of the interest of each proprietor, manager or mortgagee.		Number in mouzahwar register of the Collectorate.	Area according to present measurement.					Rent payable by raiyats, if any, for the revenue-free land.	Reference to entries in earlier registers relating to the property or any part thereof.	Reference to entries made in the intermediate register of the Collector.	Remarks.
		Date of grant.	Area of land granted.	Name of grantor.	Name of original grantee.	Name, parentage, and residence.	Character and extent of the interest.		In acres.			In bighas of 4225 square yards.					
					Reference to any decree or order of competent authority declaring or recognising the grant to be valid.				Cultivated.	Not cultivated.	Total.	Cultivated.	Not cultivated.	Total.			

18.

Khewat (Part III) of Revenue-free lands, showing lands occupied for public purposes.

1	2	3	4	5	6	7	8
Number.	Area of the land comprised in each entry	Name of the department of Government or of public body by which the land is occupied.	The purpose for which the land is occupied.	Date and particulars of appropriation.	Number in mouzahwar register.	Reference to entries made in the intermediate register.	REMARKS.

19.

Specimen Form of Record of Interest of Thikadar, Ijaradar or other Proprietary Tenure-holder—See Rule 18, *Chapter VI, Tenancy Act Rules, Board's Instructions.*

Number.	Name of estate.	Name of tenure-holder.	Serial number of estate in proprietor's khewat, and names of landlords.	Rent payable by tenure holder	Mode in which rent was fixed.	Period for which the rent has been fixed from to	Conditions and incidents of the tenure	Government revenue of land included in the tenure if known	Rayati jama according to present settlement.	REMARKS.

SCHEDULE II.

(Referred to in Chapter II, Rule 1)

PATNA DIVISION.

District.	Local areas.	Staple food-crops proposed by the Collector.	Marts at which prices to be taken.
1	2	3	4
Patna	Sudder sub-division ...	*Makai* up-land ...	Patna.
		Rice low-land ...	
	Barh ditto ...	*Makai* up-land ...	Barh.
		Rice low-land ...	
	Behar ditto ...	Wheat up-land ...	Behar.
		Rice low-land ...	
	Dinapore ditto ...	Barley up-land ...	Dinapore.
		Rice low-land ...	
Gaya	Sudder sub-division ...	Wheat up-land ...	Gya.
		Rice low-land ...	
	Nowada ditto ...	Wheat up-land ...	Nowada.
		Rice low-land ...	
	Jehanabad ditto ...	Wheat up-land ...	Jehanabad.
		Rice low-land ...	
	Aurungabad ditto ...	Wheat up-land ...	Aurungabad.
		Rice low-land ...	
Shahabad ...	Sudder sub-division ..	Wheat up-land ...	Arrah.
		Rice low-land ...	
	Buxar ditto ...	Wheat up-land ...	Buxar.
		Rice low-land ...	
	Sasseram ditto ...	Wheat up-land ...	Sasseram.
		Rice low-land ...	
	Bhabuah ditto ...	Wheat up-land ...	Bhabuah.
		Rice low-land ...	
Mozufferpore ...	Sudder sub-division ...	*Makai* up-land ...	Mozufferpore.
		Rice low-land ...	
	Seetamarhee ditto ...	*Makai* up-land ...	Seetamarhee.
		Rice low-land ...	
	Hajeepore ditto ...	*Makai* up-land ...	Hajeepore.
		Rice low-land ...	
Durbhunga ...	Sudder sub-division ...	*Murwa* (1) up-land...	Durbhunga.
		Rice low-land ...	
	Madhubani ditto ...	*Murwa* (1) up-land...	Madhubani.
		Rice low-land ...	
	Tajpore ditto ...	*Makai* up-land ...	Tajpore.
		Rice low-land ..	
Chumparun ...	Sudder sub-division ...	*Makai* up-land ...	Motihari.
		Rice low-land ...	
	Bettiah ditto ..	*Makai* up-land ...	Bettiah.
		Rice low-land ...	
Sarun	Sudder sub-division ...	*Makai* up-land ...	Chupra.
		Rice low-land ...	
	Gopalgunge ditto ..	*Makai* up-land ...	Meergunge.
		Rice low-land ...	
	Sêwan ditto ...	*Makai* up-land ...	Sewan.
		Rice low-land ...	

BHAGULPORE DIVISION.

Monghyr ...	Sudder sub-division ...	Wheat up-land ...	Monghyr.
		Rice low-land ...	
	Begusarai ditto ...	Wheat up-land ...	Begusarai.
		Rice low-land ...	
	Jamui ditto ...	Wheat up-land ...	Jamui.
		Rice low-land ...	

(1) Corrected from *Makai* to "Murwa" by Government notification of November 8, 1888.

APPDX. I.

SOIL. II.

BHAGULPORE DIVISION—*concluded.*

DISTRICT.	Local areas.	Staple food-crops proposed by the Collector.	Marts at which prices to be taken.
1	2	3	4
BHAGULPORE ...	Sudder sub-division ...	*Makai* up-land ...	Bhagulpore.
		Rice low-land ...	
	Banka ditto ...	*Makai* up-land ...	Banka.
		Rice low-land ...	
	Muddehpura ditto ...	*Murwa* up-land ...	Muddehpura.
		Rice low-land ...	
	Soopole ditto ...	*Murwa* up-land ...	Soopole.
		Rice low-land ...	
PURNEAH ...	Sudder sub-divlsion ...	Wheat up-land ...	Kusba.
		Rice low-land ...	
	Arrareah ditto ...	Wheat up-land ...	Arrareah.
		Rice low-land ...	
	Kishengunge ditto ...	Wheat up-land ...	Kishengunge.
		Rice low-land ...	
MALDAH ...	District of Maldah ...	Rice ...	English Bazar.

CHITTAGONG DIVISION.

CHITTAGONG ...	Sudder sub division ...	Rice	Chittagong.
	Cox's Bazar ditto ...	Do.	Cox's Bazar.
NOAKHALLY ...	Sudder sub-division ...	Rice	Kalitara Hât.
	Fenny ditto ...	Do.	Panchgachia Hât
TIPPERAH ...	Sudder sub-division ...	Rice	Commilla.
	Brahmanberiah ditto ..	Do.	Brahmanberiah.
	Chandpore ditto ...	Do.	Chandpore.

BURDWAN DIVISION.

BURDWAN ...	Sudder sub-division ...	Rice	Burdwan.
	Raneegunge ditto ...	Do.	Raneegunge.
	Cutwa ditto ...	Do.	Cutwa.
	Culna ditto ...	Do.	Culna.
MIDNAPORE ...	Sudder sub-division ...	Rice	Midnapore.
	Ghattal ditto ...	Do.	Ghattal.
	Tumlook ditto ...	Do.	Tumlook.
	Contai ditto ...	Do.	Contai.
BEERBHOOM ...	Sudder sub-division ...	Rice	Soory.
	Rampore Hât ditto ...	Do.	Rampore Hât.
HOOGHLY ...	Sudder sub-division ...	Rice	Hooghly.
	Serampore ditto ...	Do.	Bhuddressur.
	Jehanabad ditto ...	Do.	Jehanabad.
	Howrah ditto ...	Do.	Mohaiaree.
	Uluberiah ditto ...	Do.	Uluberiah.
BANKOORAH ...	Sudder sub-division ...	Rice	Bankoorah.
	Bishenpore ditto ...	Do.	Bishenpore.

RAJSHAHYE DIVISION.

RAJSHAHYE ...	Sudder sub-division ...	Rice	Beauleah.
	Nowgong ditto ...	Do.	Nowgong.
	Nattore ditto ...	Do.	Nattore.
PUBNA	District of Pubna ...	Rice	Pubna.
RUNGPORE ...	Sudder sub-division ...	Rice	Rungpore.
	Nelphamari ditto ...	Do.	Nelphamari.
	Kurigaon ditto ...	Do.	Kurigaon.
	Gyabanda ditto ...	Do.	Gyabanda.
DINAGEPORE ...	District of Dinagepore ...	Rice	Railway Bazar Hât.
BOGRA	District of Bogra ...	Rice	Bogra.

DACCA DIVISION.

DISTRICT.	Local areas.	Staple food-crops proposed by the Collector	Marts at which prices to be taken.
1	2	3	4
DACCA ...	Sudder sub-division ...	Rice	Dacca.
	Naraingunge ditto ...	Do.	Muddangunge.
	Manickgunge ditto ...	Do.	Manickgunge.
	Munshigunge ditto ...	Do.	Meerkadim Munshir Hât.
FURREEDPORE ...	Sudder sub-division ...	Rice	Furreedpore.
	Goalundo ditto ...	Do.	Goalundo.
	Madaripore ditto ...	Do.	Madaripore.
MYMENSINGH ..	Sudder sub-division ...	Rice	Nasirabad.
	Tangail ditto ...	Do.	Kagmari.
	Jamalpore ditto ...	Do.	Jamalpore.
	Kishoregunge ditto ...	Do.	Kishoregunge.
	Netrokona ditto ...	Do.	Netrokona.
BACKERGUNGE ...	Sudder sub-division ...	Rice	Burisal.
	Patuakhally ditto ...	Do.	Patuakhally.
	Perozepore ditto ...	Do.	Perozepore.
	Dakhin-Shabazpore ditto ...	Do.	Bhola.

PRESIDENCY DIVISION.

MOORSHEDABAD...	Sudder sub-division ...	Rice	Berhampore.
	Lalbagh ditto ...	Do.	Lalbagh.
	Kandi ditto ...	Do.	Kandi.
	Jungipore ditto ...	Do.	Jungipore.
NUDDEA	Sudder sub-division ...	Rice	Goaree.
	Ranaghat ditto ...	Do.	Ranaghat.
	Meherpore ditto ...	Do.	Kaliabazar.
	Chuadanga ditto ...	Do.	Chuadanga.
	Kooshtea ditto ...	Do.	Bahadurkhali.
JESSORE ...	Sudder sub-division ...	Rice	Jessore.
	Narail ditto ...	Do.	Narail.
	Magoorah ditto ...	Do.	Magoorah.
	Jhenidah ditto ...	Do.	Sulkupah.
	Bongong ditto ...	Do. ...	Bongong.
24-PERGUNNAHS...	Sudder sub-division ...	Rice	Chetla Hât.
	Baraset, Dum-Dum, and Barrackpore sub-divisions	Do.	Baraset.
	Diamond Harbour sub-division.	Do.	Mugra Hât.
	Bassirhat sub-division ...	Do.	Baduria Baraon.
KHOOLNA ..	Sudder sub-division ...	Rice	Khoolna.
	Satkhira ditto ...	Do.	Satkhira.
	Bagirhat ditto ...	Do.	Bagirhat.

See Government Notification of May 23rd, 1888, printed in *Calcutta Gazette* of same date, Part I, p. 446.

APPDX. I. SCH. II.

Statement showing the market days selected by District Officers for the preparation of price-lists of staple food-crops in the local areas of Bengal, under section 39 of the Bengal Tenancy Act (VIII of 1885). (1).

PATNA DIVISION.

1	2	3	4
DISTRICT.	Local areas.	Marts at which prices to be taken.	Market days for the preparation of price-lists.
PATNA ...	Sudder sub-division ...	Patna ...	1st of each month.
	Barh ditto ...	Barh ...	Ditto.
	Behar ditto ...	Behar ...	Ditto.
	Dinapore ditto ...	Dinapore ...	Ditto.
GYA ...	Sudder sub-division ...	Gya ...	1st Sunday of every month.
	Nowada ditto ...	Nowada ...	Last Friday ditto.
	Jehanabad ditto ...	Jehanabad ...	1st Monday ditto.
	Aurungabad ditto ...	Aurungabad ...	1st Sunday ditto.
SHAHABAD ...	Sudder sub-division ...	Arrah ...	1st Saturday of every month.
	Buxar ditto ...	Buxar ...	1st Thursday of each month.
	Sasseram ditto ...	Sasseram ...	Ditto ditto.
	Bhabooah ditto ...	Bhabooah ...	Ditto ditto.
MOZUFFERPORE	Sudder sub-division ...	Mozufferpore ...	30th of each month.
	Seetamarhee ditto ...	Seetamarhee ...	2nd Sunday of each month.
	Hajeepore ditto ...	Hajeepore ...	27th of each month.
DURBHUNGA ...	Sudder sub-division ...	Durbhunga ...	25th of each month.
	Madhubani ditto ...	Madhubani ...	Ditto ditto.
	Lajpore ditto ...	Lajpore ...	Ditto ditto.
CHUMPARUN ...	Sudder sub-division ...	Motihari ...	1st Sunday of the month.
	Bettiah ditto ...	Bettiah ...	1st Friday ditto.
SARUN ...	Sudder sub-division ...	Chuprah ...	15th of each month.
	Gopalgunge ditto ...	Meergunge ...	1st Tuesday of each month.
	Sewan ditto ...	Sewan ...	1st Monday ditto.

BHAGULPORE DIVISION.

MONGHYR ...	Sudder sub-division ...	Monghyr ...	7th of every month.
	Begusarai ditto ...	Begusarai ...	25th ditto.
	Jamui ditto ...	Jamui ...	1st Tuesday of every month.
BHAGULPORE ...	Sudder sub-division ...	Bhagulpore ...	2nd Monday of each month.
	Banka ditto ...	Banka ...	Ditto ditto.
	Muddehpura ditto ...	Muddehpura ...	Ditto ditto.
	Soopole ditto ...	Soopole ...	Ditto ditto.
PURNEAH ...	Sudder sub-division ...	Kusba ...	Last day of the month.
	Arrareah ditto ...	Arrareah ...	Last market day of each month.
	Kissengunge ditto ...	Kissengunge ...	Ditto ditto.
MALDAH ...	District of Maldah ...	Rahanapur ...	2nd Monday of each month.

(1) Approved of by the Board of Revenue, and circulated with their No 874A of 17th August 1888.

CHITTAGONG DIVISION.

1	2	3	4
DISTRICT.	Local areas.	Marts at which prices to be taken.	Market days for the preparation of price-lists.
CHITTAGONG ...	Sudder sub-division ...	Chittagong ...	2nd market day of each month.
	Cox's Bazar ditto ...	Cox's Bazar ...	Ditto ditto.
NOAKHALLY ...	Sudder sub-division ...	Kalitara Hât ...	Last Friday of each month.
	Fenny ditto ...	Panchgachia Hât	Ditto ditto.
TIPPERAH ...	Sudder sub-division ...	Commilah ...	1st market day of the month.
	Brahmunberiah ditto ...	Brahmunberiah	Ditto ditto.
	Chandpore ditto ...	Chandpore ...	Ditto ditto.

BURDWAN DIVISION.

BURDWAN ...	Sudder sub-division ...	Burdwan ...	18th of every month.
	Raneegunge ditto ...	Raneegunge ...	17th of every month.
	Cutwa ditto ...	Cutwa ...	Wednesday which immediately precedes the 15th or falls on the 15th of each month.
	Culna ditto ...	Culna ...	17th of every month.
MIDNAPORE ...	Sudder sub-division ...	Midnapore ...	2nd Saturday of every month.
	Ghattal ditto ...	Ghattal ...	1st of each month.
	Tumlook ditto ...	Tumlook ...	3rd Wednesday of every month.
	Contai ditto ...	Contai ...	25th of each month.
BERHBHOOM ...	Sudder sub-division ...	Soory ...	23rd of each month.
	Rampore Hât ditto ...	Rampore Hât ...	1st market day after the 15th of each month.
HOOGHLY ...	Sudder sub-division ...	Hooghly ...	2nd Thursday of each month.
	Serampore ditto ...	Bhuddressur ...	Ditto ditto.
	Jehanabad ditto ...	Jehanabad ...	Ditto ditto.
	Howrah ditto ...	Moharee ...	Ditto ditto.
	Uluberiah ditto ...	Uluberiah ...	Ditto ditto.
BANKOORAH ...	Sudder sub-division ...	Bankoorah ...	30th of the month.
	Bishenpore ditto ...	Bishenpore ...	Ditto ditto.

RAJSHAHYE DIVISION.

RAJSHAHYE ...	Sudder sub-division ...	Beauleah ...	Last Friday of every month.
	Nowgong ditto ...	Nowgong ...	Last Wednesday of every month.
	Nattore ditto ...	Nattore ...	Last day of every month.
PUBNA ...	District of Pubna ...	Pubna ...	1st Tuesday of every month.
RUNGPORE ...	Sudder sub-division ...	Rungpore ...	2nd Saturday of every month.
	Nelphamari ditto ...	Nelphamari ...	2nd Wednesday of every month.
	Kurigram ditto ...	Kurigram ...	4th Saturday of every month.
	Gyabanda ditto ...	Gyabanda ...	1st Friday of every month.
DINAGEPORE ...	District of Dinagepore ...	Railway Bazar Hât.	1st Sunday of every month.
BOGRA ...	District of Bogra ...	Bogra ...	1st market day after the 1st of each month.

APPDX. I.
SCH. II.

DACCA DIVISION.

1	2	3	4
DISTRICT.	Local areas.	Marts at which prices to be taken.	Market days for the preparation of price-lists.
DACCA	Sudder sub-division ...	Dacca ...	1st Sunday of every month.
	Narainguge ditto ...	Muddangunge...	Monday following the Sunday selected for Mirkadim.
	Manickgunge ditto ...	Manickgunge ...	1st Sunday of every month.
	Munshigunge ditto ...	Munshir Hât ...	1st Saturday of every month.
		Mirkadim ...	1st Sunday of every month.
FURREEDPORE ...	Sudder sub-division ...	Furreedpore ...	2nd Wednesday of every month.
	Goalundo ditto ...	Goalundo ...	1st Wednesday of every month.
	Madaripore ditto ...	Madaripore ...	2nd Saturday of every month.
MYMENSINGH ...	Sudder sub-division ...	Nasirabad ...	2nd market day on the 3rd week of every month.
	Attia ditto ...	Kagmari ...	Last market day of each month.
	Jamalpore ditto ...	Jamalpore ...	1st Saturday of every month.
	Kishoregunge ditto ...	Kishoregunge...	3rd Thursday of each month.
	Netrokona ditto ...	Netrokona ...	1st Saturday of each month.
BACKERGUNGE...	Sudder sub-division	Burrisal ...	Saturday, 2nd week of the month.
	Patuakhally ditto	Patuakhally ...	Tuesday ditto.
	Perozepore ditto	Perozepore ...	Ditto ditto.
	Dakhin-Shabazpore ditto	Bhola ...	Monday, 3rd week of the month.

PRESIDENCY DIVISION.

MOORSHEDABAD	Sudder sub-division ...	Berhampore ...	20th of every month.
	Lalbagh ditto ...	Lalbagh ...	1st Monday of each month.
	Kandi ditto ...	Kandi ...	4th Saturday ditto.
	Jungypore ditto ...	Jungypore ...	1st Tuesday ditto.
NUDDEA ...	Sudder sub-division ...	Goaree ...	3rd Wednesday of each month.
	Ranaghat ditto ...	Ranaghat ...	3rd Monday ditto.
	Meherpore ditto ...	Kaliabazar ...	Ditto ditto.
	Chuadanga ditto ...	Chuadanga ...	3rd Saturday ditto.
	Kooshtea ditto ...	Bahadurkhally	3rd Monday ditto.
JESSORE ...	Sudder sub-division ...	Jessore ...	Monday, 2nd week of every month.
	Narail ditto ..	Narail ...	Thursday, ditto.
	Magoorah ditto ...	Magoorah ...	Ditto ditto.
	Jhenidah ditto ...	Sulkupah ...	Saturday, ditto.
	Bongong ditto ...	Bongong ...	Monday, ditto.
24-PERGUNNAHS	Sudder sub-division ...	Chetla Hât ...	2nd Wednesday of every month.
	Baraset, Dum-Dum and Barrackpore sub-divisions.	Baraset ...	Last Friday of each month.
	Diamond Harbour sub-division.	Mugra Hât ...	2nd Thursday of every month.
	Bussirhat sub-division ...	Baduria Baraon	2nd Tuesday ditto.
KHULNA ...	Sudder sub-division ...	Khulna ...	1st Wednesday of every month.
	Satkhira ditto ...	Satkhira ...	1st Tuesday ditto.
	Bagirhat ditto ...	Bagirhat ...	1st Wednesday ditto.

Appendix II.

Registers prescribed by the Board of Revenue, under the Bengal Tenancy Act (C. O. No. 2 January 7, 1887).

The following Registers under the Bengal Tenancy Act are prescribed by the Board :—

Register I—of receipt and disposal of fees under sections 12, 13, 15, and 18*a*.

This will be kept up by Sub-divisional Officers as well as by Collectors.

Register I (a)—of notices of transfers of tenures or raiyati holdings at fixed rates under sections 12, 13, 14, 15, and 18*a*.

This will also be kept up by Sub-divisional Officers as well as by Collectors.

Register II—of applications for commutation of rent payable in kind under section 40.

This will also be kept at Sub-divisions, but it need only be maintained in districts in which the *bhaoli* system prevails.

Register III—of appraisement or division of crops, sections 69 and 70.

This need only be kept in districts in which the *bhaoli* system prevails.

Register IV—of applications for registration of improvements under section 80.

This will also be kept up by Sub divisional Officers.

Register V—of applications to record evidence of improvements under section 81 (1), and of applications to decide questions of the right to make improvements under sections 78(*a*) and 78 (*b*).

This will also be kept up by Sub-divisional Officers.

Register VI—of notices of landlord's intention to enter on abandoned holdings, section 87 (2).

Register VII—of applications to record particulars specified in section 102 (to make record of rights under section 101) whether made under section 103 or 101 (2) (*a*).

Register VIII—of applications for demarcation of proprietor's private land, and orders thereon under section 118.

Register IX—of notices of annulment of encumbrances under section 167.

These Registers came into use on the 1st April 1887.

Appdx. II.

REGISTER I (*to be kept by Sub-divisional Officers also*) *of receipt and disposal of fees under sections* 12, 13, 15, 18*a*.

Serial number	Date	From what office, court, or person received	At whose request notice is served	Person on whom notice is to be served		Amount received by Collectorate Nazir							Service of Notice.		Disposal of Landlord's fee				Number in Process Register 43	Remarks
				Name	Address	Process-fees	Railway fare, &c	Landlord's fees.				Total	Date of service.	Manner of service	Date made over to peon	Date of payment to landlord	Challan No	Deposit in treasury: Challan date		
								Section 12	Section 13	Section 15	Section 18a									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21

REGISTER I (*a*)—(*to be kept by Sub-divisional Officers also*) *of notices of transfers of tenures or raiyati holdings at fixed rates under sections* 12, 13, 14, 15, 18*a*.

1	2	3	4						5	6	7
			Particulars of tenure, or raiyati holding at fixed rates, transferred.								
				Village.							
Serial number.	Person or court from whom notice is received, with sections of the law and nature of transfer	Date of receipt of notice by Collector.	Pergunnah	Name	Towjih number, if any	Area, if known.	Annual rent.	Description	Name of transferor.	Name of transferee.	Remarks.

REGISTER II

Register of applications for commutation of rent payable in kind under section 40 (to be kept also at sub-divisions)

Serial number of application.	Village in which land is situated	Name of applicant with his designation *i.e.*, whether raiyat or landlord	Name and designation of opposite party.	Date of application for commutation	Date of final order.	SUBSTANCE OF ORDER, *i.e.*, WHETHER APPLICATION		REMARKS
						Granted	Refused	
1	2	3	4	5	6	7	8	9

This register need only be kept in districts in which the *bhaoli* system prevails.

REGISTER III.

Register of Appraisement or Division of crops, sections 69 and 70.

1	2*	3	4*	5	6*	7	8	9	10	11		12*	13
Serial number.	Date of application.	Name of village and pergunnah in which holding is situated.	Name, father's name, and residence of applicant.	Description of applicant, viz., whether landlord, tenant, or Magistrate.	Amount of expenses deposited.	Date of order, under section 69.	Name of officer, if any, appointed to appraise or divide the produce.	Date of report submitted by officer under section 70(3).	Date of Collector's order under section 70(4).	Abstract of Collector's order. Application		Manner of disposal of expenses deposited.	Remarks
										Granted.	Refused.		

This register need only be kept in districts in which the *bhaoli* system prevails.

When the order is made on the representation of a Magistrate, columns 2, 4, 6, and 12 will be blank.

REGISTER IV.

Register of application for registration of improvements under section 80 (to be kept also by Sub-divisional Officers).

Serial number.	Date of application for registration	Name of pergunnah and estate in which improvement effected	Name of village in which improvement effected.	Name of applicant and nature of applicant's interest.	Nature of improvement.	By whom executed and at whose expense	When executed	Date of final order	Substance of final order showing whether registration refused or admitted.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11

REGISTER V.

Register of application to record evidence of improvement under section 81(1) *(to be kept also by Sub-divisional Officers) and of applications to decide questions of right to make improvement under sections* 78(*a*), 78(*b*.)

Serial number.	Name, address and designation of applicant whether landlord or tenant, with name of village in which the land is situated.	Date of application and nature thereof, whether under sections 78(*a*), 78 (*b*), or 81(1)	Date of final order.	SUBSTANCE OF ORDER, WHETHER APPLICATION—	
				Granted. (*a*)	Refused. (*b*)
1	2	3	4	5	

REGISTER VI.

Register of notices of landlord's intention to enter on abandoned holdings, section 87(2).

Serial number.	Date of filing notice.	Name and address of landlord.	Name of last tenant and of village and pergunnah in which land is situated.	Area of holding if known.	Rent of holding.	Date of publication of notice by Collector under Rule 10, Chapter V of the Tenancy Act Rules.	REMARKS.
1	2	3	4	5	6	7	8

APPDX. II.

REGISTER VII.

Register of applications to record particulars specified in section 102 (to make record-of-rights under section 101) whether made under section 103 or 101 (2) (a).

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Serial number.	Date of application.	Name of applicant and tenancy.	Status of applicants whether proprietors or tenure-holder, or tenants and particulars in respect of which application is made.	Number of tenants (so as far as applicant is able to state it) occupying the state or tenure or part thereof in respect of which the application is made, the total rent payable by them and estimated area covered.	If application is allowed, name of officer by whom record is to be prepared (Rule 45, Chapter VI.)	AMOUNT DEPOSITED FROM TIME TO TIME UNDER RULE 46.		Date of completion of operations.	Amount of the rent recorded, or settled, as case may be.	Increase as compared with rent mentioned in column 5.	Decrease.	Disposal of deposit shown in columns 7 and 8.	REMARKS
						Amount.	Date.						

* If the application is rejected, the fact of the rejection and the date of the order should be given in the column of remark. In such cases columns 6 to 13 will be blank

REGISTER VIII.

Register of applications for determination of proprietors' private land and orders thereon under section 118.

Serial number.	Name of applicant and designation whether proprietor or tenant.	Date of application.	Name and towzih number of the estate	Area in respect of which application has been made.	Amount deposited under Rule 46, Chapter VI, if any.		Date of completion of proceedings.	Amount refunded if any, under Rule 46, Chapter VI.	Area determined to be private lands if any.	Remarks.
					Amount. (*a*)	Date. (*b*)				
1	2	3	4	5	6		7	8	9	10

APPDX II.

REGISTER IX.

Register of notices of annulment of encumbrances under section 167.

Serial No.	Name and residence of applicant	Name and residence of encumbrancer	Date of application	Date of service of notice.	How served	REMARKS
1	2	3	4	5	6	7

Appendix III.

HIGH COURT RULES.

Rules under section 100.

1. Every manager, appointed under Chapter IX of the Bengal Tenancy Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

2. The manager shall pay the Government revenue, rent, and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

3. No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge: Provided that this Rule shall not render valid any lease for a shorter time than three years, if the District Judge directs by a written order that his sanction is to be obtained as regards all leases granted by the manager.

4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

5. No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

Rules under Chapter XII.

6. All applications to distrain shall be presented and heard in open Court. The examination mentioned in Section 123, Sub-section (2), shall be on oath or affirmation.

7. All such applications and all notices of distraint under Section 141 shall be entered in a register to be called the "Distraint Register," which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of notice under Section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.

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Form of Distraint Register prescribed by Rule 7.

Serial No. of		1	2	3	4	5	6	7	8	9	10	11	Amount realised by sale.					Amount (if any) deposited under section.		18
		Application under section 121.	Notice under section 141.	Date of application to distrain or of notice of distraint under section 141.	Name and address of the applicant under section 121 or of the person giving notice under section 141.	Name and address of the defaulter.	Amount of arrear claimed and period in respect of which it is claimed.	Import of the order passed and date on which it is passed.	Name of the officer deputed to distrain, or to take charge of property distrained.	Date of distraint.	Date of sale proclamation.	Date of sale.	Arrear.	Costs.	Surplus.	Total.	Arrear.	Costs.	Remarks.

8. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under Section 141, must in all cases be able to read and write the language of the district.

9. The written demand under section 125, shall be framed in accordance with entries contained in the application or notice referred to in Rule 2.

10. The notification of distraint directed in section 124, Act VIII, 1885, shall be published—

By fixing up in a conspicuous part of the holding, or other place, in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

11. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due, and it shall direct any person intending to reap, gather, or store the crop or produce, if unreaped or ungathered, or intending to do any other act necessary for its preservation, to give due notice of his intention to the person who has been placed in charge.

12. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

13. In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, gather, or store any crops or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end.

14. The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each; and, if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where, and the time when, the sale will be held.

15. When the sale is concluded and the sale proceeds are realised, the officer who held the sale shall, after paying the costs of the distraint and sale, as directed in section 134, forthwith pay the balance into Court.

16. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so.

17. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down.

18. All officers deputed to distrain property under this chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or, if there is no such post office, shall, immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name

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of the person (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also immediately on his return file an account of all money received and disbursed by him, together with the receipts for the same and the record of the biddings at the sale, if a sale has taken place.

19. Every person, distraining produce by virtue of the authority conferred on him under section 141 of Act VIII, 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce, in a tabular form which shall contain the following particulars :—

(*a*) The name and address of the person at whose instance the distraint was made and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.

(*b*) The name of the defaulter, and of the place in which he resides, or was known to be last residing.

(*c*) The amount of the arrear with interest, if any, and the period in respect of which it is claimed.

(*d*) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.

(*e*) The description and approximate value of the produce distrained, and if the same has been reaped or gathered, the place in which it is stored.

(*f*) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.

(*g*) The date on which the distraint was made.

(*h*) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered.

Published in the *Gazette of India*, dated 7th August 1886, Part II, pages 470 and 471, and in the *Calcutta Gazette*, dated the 28th July 1886, Part I, pages 886 and 887.

Appendix IV.

RULES FOR THE REGISTRATION OF DOCUMENTS UNDER THE BENGAL TENANCY ACT VIII OF 1885 FRAMED UNDER SECTION 69 OF THE INDIAN REGISTRATION ACT III OF 1887.

1. A document presented for registration under sections 12, 18, 85 and 175 shall be first examined with reference to registration Rule 42, and next with reference to the particular section of the Tenancy Act under which it is presented.

2. In certifying its admissibility to registration, the registering officer shall quote registration rule 42, as well as the particular section of the Tenancy Act under which it is admitted. Thus "Admissible under rule 42; also under section of the Bengal Tenancy Act VIII of 1885. Correctly stamped under the Indian Stamp Act, Schedule , No. ."

3. When a sub-lease executed by a ryot purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.*, "Not admissible under sub section 2, section 85 of the Bengal Tenancy Act VIII of 1885." The note shall be signed, sealed, and dated by the registering officer.

4. When a document is admitted to registration, the fees levied shall be noted below the certificate of admissibility in the following manner, *viz.*:—

		Rs.	A.	P.	Rs.	A.	P.
Fees paid A ...	...	1	0	0			
Ditto R ...	...	1	4	0			
					2	4	0
Landlord's fee ...	...	2	0	0			
Process fee (in court-fee stamps)	...	0	12	0			
					2	12	0
	Total		...		5	0	0

(Sd.)

Sub-Registrar.

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5. The document shall be entered in the Registration Fee-book in order of presentation in the same manner as any other document presented under the Indian Registration Act. The registration fee shall be credited in column 7 with the necessary details, and included in the total of other registration fees for credit to Government.

Note.—The fee-book, which is now in use, is called the Registration Fee-book, and the new fee-book is called the Tenancy Act Fee-book.

6. Fees for processes shall be paid in Court-fee stamps, which shall be affixed to the notices, and cancelled by the registering officers in the manner prescribed in section 30 of the Court-fees' Act, *i.e.*, by punching out the figure-head so as to leave the amount designated on the stamps untouched. The pieces punched out shall be immediately destroyed.

7. The landlords' fees and the process shall be shown separately in a new fee-book (hereinafter called the Tenancy Act Fee-books.)*

Tenancy Act Fee-book, prescribed in paragraph 7 of the rules

1	2	3	4	5	6	7	8	9	10	11	12
Serial number of notice.	Serial number of document in Registration Fee-books.	Date of presentation.	From whom received.	Nature of document.	Annual rent.	Landlord's fee.	Process fees in court stamps.	Number and date of letter sending notices and landlords' fees to the Collector.†	Serial number of copy sent under section 176.	Signature of the registering officer.	REMARKS.

† Collector includes a Sub-divisional Officer within whose jurisdiction the landlord of the transferred tenure resides.

8. Column 1 of the Tenancy Act Fee-book should be filled up on the presentation of the document, whether the particular notice is ready or not. The number in that fee-book should be transferred to the notice when it is ready. Columns 2 to 8 should also be filled up immediately on the presentation of the document. Column 9 should be filled up on the date on which the notice and landlord's fees are sent to the Collector or the Sub-divisional officer, as the case may be. Column 10 should be filled up on receipt of the fees for copy under section 176. The registering officer should affix his initials to each entry in column 11 of the Tenancy Act Fee-book.

9. On the completion of the registration of documents relating to the transfer of the tenures under section 12, of ryoti holdings at fixed rates under section 18, notices shall be prepared in duplicate[1] in the form specified in Schedule I of the Rules under the Bengal Tenancy Act published in the *Calcutta Gazette* of the 23rd December, 1885; and they shall, with the landlords' fees, be forwarded to the Collector or the Sub-

[1] Every Sub-Registrar shall keep an office copy of each original notice sent by him, noting on the back the number of copies prepared and to whom they were addressed. (Inspector-General of Registration's Circular No. 21 of 17th September, 1888.)

divisional officer* as the case may be, under a covering letter to the following effect :— APPDX. IV.

No.

Dated

To—The

SIR,

I HAVE the honour to forward the notices under section 12, Act VIII of 1885 in the prescribed form, together with the landlords' fees, amounting to Rs. . The details of the landlords' fees and process fees realised on account of these notices are shown below :—

Number of notice.	Landlords' fee. Rs. A. P.	Process fee. Rs. A. P.
56	1 5 0	0 12 0
57	3 12 6	1 8 0
58	5 4 9	3 0 0
Total ...	10 6 3	5 4 0

I have, &c.,

Seal.

Sub-Registrar of

10. The amount of landlords' fee and the process fees shall be entered in the printed receipt for the document granted under section 52 of the Registration Act.

11. An application under section 176 for notification of incumbrances to the landlords may be made either verbally or in writing, and when made in writing it shall bear a court-fee stamp of annas eight. It shall be accompanied by the fee for the copy under articles G and H of the schedule of fees under the Registration Act, as well as by the amount of process fees. A receipt for the amounts thus taken shall be granted in the form (with necessary alteration) of receipts prescribed under section 52 of the Registration Act.

12. An entry shall at the same time be made in the Registration Fee-book and the fees credited to the Registration Department. The process fee shall be accounted for in the Tenancy Act Fee-book as directed in paragraph 7 of these rules.

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* Circular No. 20 of the Inspector-General of Registration, dated 28th July, 1887, directs that Sub-Registrars shall send the landlord's fee to Collectors and Sub-divisional officers by means of money-order or remittance transfer receipt, and debit the amount in their contingent bills.

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13. The copy of the instrument under section 176 shall be forwarded to the Collector or the Sub-divisional officer, as the case may be, with a covering letter to the following effect :—

No.

Dated

To—The

SIR,

I HAVE the honour to forward the copy herein enclosed, and to request that it may be served on A B, resident of _____, as required by section 176, Act VIII of 1885. Court-fee stamps for process fee of Rs.__ ____ are affixed to the copy.

I have, &c.,

Sub-Registrar of

A notice in the form prescribed in the rules under the Tenancy Act, referred to in paragraph 9, is not required in transmitting a copy to the Collector or the Sub-divisional officer under section 176. The stamps received under that section are to be treated in the same manner as directed in Rule 6, *supra*.

14. A separate challan shall be prepared for the landlords' fee credited in the Tenancy Act Fee-book. For this purpose the details shall be entered on the reverse of the challan. These shall be as follows :—

1	2	3	4	5		
Serial number of challan.	Number of notice.	NAME OF DEPOSITOR.	Name of the person to whom payable.	AMOUNT.		
				Rs.	A	P.

F. B. PEACOCK,
Chief Secy. to the Govt. of Bengal.

IT has been proposed to substitute the following rules for the above, but they are still under the consideration of Government and have not yet been sanctioned.

Registration of documents under the Bengal Tenancy Act, VIII of 1885.

229. The sections of the Tenancy Act, which refer to the registration of documents, are sections 12, 18, 85, 175, and 176. Section 12 has been amended by Act VIII of 1886, and has reference only to the transfer of a permanent tenure by gift, voluntary sale, or usufructuary mortgage, *i.e.*, where the mortgagor delivers possession and authorises the mortgagee to retain the rents and profits accruing from the property mortgaged. [Section 58 (d), of the Transfer of Property Act, IV of 1882.]

Leading provisions.

Section 18 enacts that a raiyati-holding at a fixed rent or fixed rate of rent is subject to the same provisions with respect to its transfer by gift, sale or mortgage as a permanent tenure.

The period allowed by section 175 for the registration of a certain class of documents expired on the 31st October, 1886, and after that date their registration was barred.

Section 176 relates to the notification of incumbrances to the landlord. For definition of the term "incumbrance," see section 161.

Examination of the deed.

230. A document presented for registration under sections 12, 18, and 175, shall be first examined with reference to registration rule 51, and next with reference to the particular section of the Tenancy Act under which it is presented. Care should be taken not to carry out the procedure under sections 12 and 18, unless it appears *on the face of the deed itself* that the tenure transferred is a permanent tenure, or that the holding transferred is a holding at a rent, or rate of rent, fixed in perpetuity.

Fractional shares of tenures and holdings.

231. Under section 88 of the Tenancy Act, a division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing. When, therefore, it appears from the document that only a fractional share of a tenure or holding is being transferred, and the landlord's consent in writing is not produced, the procedure under sections 12 and 18 should not be carried out.

Refusal of registration of sub-leases executed by raiyats creating a term exceeding nine years.

232. When a sub-lease executed by a raiyat purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.*, "*Not admissible under sub-section 2, section 85 of the Bengal Tenancy Act.*" The note shall be signed, sealed, and dated by the Registering-officer. The order of refusal will be entered in Book II.

Endorsement of certificate of admissibility.

233. In certifying the admissibility to registration of a document presented for registration under these rules, the Registering officer shall quote registration rule 51 as well as the particular section of the Tenancy Act under which it is admitted. Thus: *Admissible under Rule* 51, *also under section of the Bengal Tenancy Act. Correctly stamped under the Indian Stamp Act, Schedule , No. .*

The fees levied shall be noted below the certificate of admissibility in the following manner, *viz.*:—

	Rs.	A.	P.	Rs.	A.	P.
Fees paid A	1	0	0			
Ditto R	1	4	0			
				2	4	0
Landlord's fee	2	0	0			
Process fee (in Court-fee stamps)	0	12	0			
Peon's charges, &c.	0	8	0			
				3	4	0
Total				5	8	0

Sub-Registrar.

Receipt for fees.

234. The amount of landlord's fee, process fee, peon's charges, &c., shall be entered in the printed receipt for the document granted under section 52 of the Registration Act. In calculating the amount of landlord's fee, pie should be omitted.

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All documents to be entered in the ordinary Registration Fee-book

235. The document shall be entered in the Registration Fee-book in order of presentation in the same manner as any other document presented under the Indian Registration Act. The registration fee shall be credited in column 7 with the necessary details, and included in the total of other registration fees for credit to Government. The serial number of the document in the Tenancy Act Fee-book shall be noted in the column of remarks of the Registration Fee-book with the letters T. A. for reference.

Process fees.

236. Fees for processes shall be paid in Court-fee stamps, which shall be affixed to the notices, and cancelled by the Registering-officers in the manner prescribed in section 30 of the Court-fees, Act,—*i.e.*, by punching out the figure head so as to leave the amount designated on the stamps untouched. The pieces punched out shall be immediately destroyed.

Peons' charges.

237. Charges on account of peons' railway fare, boat-hire, or ferry charges shall be levied according to the rule quoted in paragraph 3 of Appendix A, subject to the instructions of the Collector of the District.

Tenancy Act Fee-book,

238. Landlords' fees, process fees, and charges on account of peons' railway fare, boat-hire, or ferry charges, or on account of serving notices by registered cover (*vide* Rule 243), shall not be shown in the Registration Fee-book, but shall be shown separately in a Fee-book called the Tenancy Act Fee-book.

Tenancy Act Fee-book.

1	2	3	4	5	6	7	8	9	10	11	12	13
Serial number of notice.	Serial number of document in Book I.	Date of presentation.	From whom received.	Nature of document.	Annual rent.	Landlords' fee.	Process fees in Court-fee stamps.	Peon's boat hire, railway fare, ferry tolls and postal charges.	Number of challan or money-order used for remitting the fees to the Collector.	Number and date of letter sending notices to the Collector.	Signature of the registering officer.	REMARKS.
					Rs. A. P.	Rs. A.	Rs. A.	Rs. A.				

Mode of filling up Tenancy Act Fee-book.

239. Column 1 of the Tenancy Act Fee-book should be filled up on the presentation of the document, whether the particular notice is ready or not. The number in that column should be transferred to the notice when it is ready. Columns 3 to 9 should also be filled up immediately on the presentation of the document. Columns

10 and 11 should be filled up on the date on which the notice and landlords' fees are sent to the Collector or the Sub-divisional officer, as the case may be. The Registering officer should affix his initials to each entry in column 11 of the Tenancy Act Fee-book. The serial number of a copy sent under section 176 should be entered in the column of remarks.

Daily totals to be posted in cash-book.

240. Columns 7, 8 and 9 of the Tenancy Act Fee-book shall be totalled daily, and the daily totals of all cash receipts—that is, all receipts except process fees paid in Court-fee stamps—shall be posted in the cash-book under the heads of landlords' fees and peons' charges, &c.

Preparation and forwarding of notices under sections 12 and 18 of the Tenancy Act.

Rules for preparing notices.

241. On the completion of the registration of documents relating to the transfer of the tenures under section 12, or raiyati-holdings at fixed rates under section 18, notices shall be prepared in accordance with Rule 1, Chapter V of the general rules under the Tenancy Act, reprinted in Appendix B. The form of the notice is shown in Schedule I, Appendix B.

Process fee in case of joint landlords.

242. When two or more persons are joint landlords, a single process fee only should be levied.

What notices required in case of joint landlords.

243. If the joint landlords have a common agent or a common manager, it will be sufficient to prepare a single notice to be served on him. If there is no common agent or common manager, the person or persons to whom the rent has ordinarily been paid for the period immediately preceding the transfer must be ascertained, and the necessary copy or copies to be served on such person or persons must be prepared. In this case, for each copy so prepared it will be necessary to levy an additional charge of 2 annas as the cost of sending the copy by registered cover.

What notices required in case of two or more landlords who are not joint.

244. When there are two or more landlords but they are not joint, it will be necessary to prepare a copy of the notice for each landlord. Only, however, as many process fees should be levied as there are villages in which it will be necessary to serve the notices.

Notices how to be forwarded to the Collector.

245. All notices or copies of notices shall be prepared in duplicate, and shall with the landlords' fees, process fees, &c., be forwarded to the Collector or the Sub-divisional officer, as the case may be, under a covering letter to the following effect:—

No.

Dated

To—The

SIR,

I HAVE the honour to forward the notices under section 12, Act VIII of 1885, in the prescribed form, together with the landlords' fees, amounting to Rs.

The details of the landlords' fees, process fees, peons' charges, &c., realized on account of these notices are shown below:—

Serial number of notice.	Number of notices forwarded.	Landlords' fee. Rs.	As.	P.	Process fee. Rs.	As.	P.		Rs.	As.	P.
56	4	1	5	0	0	12	0	Peons' railway fare ...	0	10	0
57	2	3	12	0	1	8	0	Do. boat-hire ...	0	6	0
58	3	5	4	0	0	12	0	Registered cover charge ...	0	4	0
		10	5	0	3	0	0		1	4	0

Seal

I have, &c.,

Sub-Registrar of

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Copies of original notice.

246. When it is necessary to issue more notices than one, only one serial number should be entered in column 1 of the Tenancy Act Fee-book. There will thus be one original notice in which the names of all the proprietors concerned will be entered, and as many copies of this original notice will be made as are necessary, each copy bearing the serial number of the original notice.

Draft copy to be filed in the office.

247. One copy of the original notice shall be filed for reference in the Registration office, a note being made upon it of the number of copies sent.

No notice required when landlord is himself the transferee.

248. When the landlord is himself the transferee, there is no occasion to levy fee or send notice.

Notices for landlords in Calcutta.

249 Notices for landlords in Calcutta should be sent to the Collector of 24-Pergannahs for service.

Case of several landlords residing in different districts.

250. When a transferred tenure or holding is held jointly by several landlords residing in different districts, the notices and the landlords' fee should be sent to the Collector within whose jurisdiction the tenure or holding is situated.

Remittance of landlords' fees, &c.

251. Landlords' fees, &c., must be remitted to the Collector with the same regularity as is required in the case of remittance to the Treasury of ordinary registration receipts.

Form a challan.

252. A separate challan shall be prepared for the landlords' fee, peons' charges, &c., credited in the Tenancy Act Fee-book. For this purpose the details shall be entered on the reverse of the challan. These shall be as follows:—

1	2	3	4	5		
Serial number of challan.	Number of notice.	Name of depositor.	Name of the person to whom payable, and details of peons' charges, &c.	Amount.		
				Rs.	A.	P.

Remittance Transfer Receipts.

253. When it is necessary to remit landlords' fees, &c., to the Collectors of other districts, they should be sent, if possible, by Remittance Transfer Receipts. When they are so sent, a note should be made to that effect in column 13 of the Fee-book.

Money-orders.

254. Remittance Transfer Receipts will be only available for remittance to Collectors at sudder stations. When it is necessary to remit landlords' fees to Sub-divisional officers in other districts, or when remittances have to be made to other districts by Sub-Registrars at a distance from sudder or sub-divisional treasuries, the amounts should be sent by money-order. The commission fee on money-orders should be defrayed from permanent advance. The payee's receipts of amounts sent by money-order should be carefully filed as vouchers.

Cheques in lieu of cash.

255. Remittances from sudder Sub-Registers to Sub-divisional officers in the same district should be made by Treasury cheques granted in lieu of cash.

Refunds of Tenancy Act fees.

256. Any fees realized which may remain in the hands of the Registering-officer may be refunded if the document is refused registration, a note to that effect being made in the column of remarks in the Fee-book. Court-fee stamps may be returned if they have not been punched. It is not necessary to enter these refunds in the Monthly Returns.

257. A statement of operations under sections 12 and 18 of the Tenancy Act, shall be submitted monthly by Sub-Registrars in form No. 12 of the second schedule. A statement for the whole district, countersigned by the Collector, shall be submitted by each Registrar to the Inspector-General. The statement can be easily compiled from the Fee-book, if column 5 is carefully filled up.

Monthly Return.

Notification of Incumbrances to the Landlord under section 176 of the Tenancy Act.

258. An application under section 176 for notification of incumbrances to the landlords may be made either verbally or in writing, and when made in writing, it shall bear a Court-fee stamp of annas eight. It shall be accompanied by the fee for the copy under Articles G and H of the schedule of fees under the Registration Act, as well as by the amount of process fees. A receipt for the amounts thus taken shall be granted in the form (with necessary alteration) of receipt prescribed under section 52 of the Registration Act.

Application how made.

259. An entry shall at the same time be made in the Registration Fee-book, and the fees credited to the Registration Department. The process fee shall be accounted for in the Tenancy Act Fee-book, as directed in Rule 238. The serial number of the copy sent shall be noted in the column of remarks in the Tenancy Act Fee-book.

Fee how shown.

260. The copy of the instrument under section 176 shall be forwarded to the Collector or the Sub-divisional officer, as the case may be, with a covering letter to the following effect :—

Copy of instrument to be forwarded with covering letter.

No.

Dated

To—The

SIR,

I HAVE the honour to forward the copy herein enclosed, and to request that it may be served on A B, resident of————————, as required by section 176, Act VIII of 1885. Court-fee stamps for process-fee of Rs.——— are affixed to the copy.

I have, &c.,

Sub-Registrar of

A notice in the form prescribed in rule 245 is not required in transmitting a copy to the Collector or the Sub-divisional officer under section 176. The stamps received under that section are to be treated in the same manner as directed in Rule 238.

261. A copy of an instrument served in order to notify an incumbrance is equivalent to a notice under section 12, and Registration officers are referred to Rule 3, Chapter I of the general rules under the Tenancy Act, quoted below for the procedure to be followed in serving such a copy.

Process-fee.

262. For every copy made under section 176 of the Bengal Tenancy Act VIII of 1885, such copying fee, or copying and searching fees shall be charged as may be leviable under Article G, or under Articles G and H of the schedule of fees under the Registration Act for the time being in force. These shall be shown in the ordinary Registration Fee-book, and not in the Tenancy Act Fee-book.

Copying fees.

Appendix V.

A Glossary of terms used in the authorised translations of the Bengal Tenancy Act, 1885, and rules framed under it.

English.	Hindi.	Bengali.
Abandonments ...	Chhor dena ...	Parityág.
Accounts ...	Hisáb ...	Hisáb.
„ Forms of ...	Hisáb ke naksh ...	Hisáber pat.
„ Statement of ...	Hisáb ki tafsil ...	Hisáber bibaran patra.
Acquittance ...	Safái yá fárighkhati ...	Fárkhati.
„ Valid ...	Puri safái yá farighkhati	Upajukta fárkhati.
Area ...	Rakba ...	Bhumir parimán.
„ Alteration of ...	Rakba ká badalna ...	Bhumir parimán paribartan.
„ Local ...	Sarzamin ká rakba ...	Sthaniya bhumir parimán.
Assessment of revenue ...	Sarkári málguzari ka bandobast.	Rájasver bandobast.
Boundaries ...	Chauhaddi ...	Símáná.
Cause ...	Wajeh ...	Káran.
„ Reasonable ...	Wajeb munásib ...	Jukti siddha káran.
Clause ...	Cláz ...	Prakaran.
Contract ...	Kaul karár ...	Chukti.
Counterparts ...	Part-i-sani ...	Múri.
Custom ...	Rewaj ...	Desáchár.
Damages ...	Harja ...	Kshati.
„ Award ...	Harja dilana ...	Kshati puran.
Demand ...	Talbi ...	Dávipatra.
Deposit ...	Amánat rakhna ...	Amánat.
„ Receipt of ...	Amánat rakhe rupyá ki rasid.	Amánat páwan.
„ Refund of ...	Amánat rakhe rupyá ka wapas dena.	Amánati táká phirayá dewa.
Distraint ...	Kurki ...	Krok.
„ Wrongful ...	Be-aini kurki ...	Anyáya kroka.
Ejectment ...	Bedakhli ...	Uchchhed karana.
„ Restriction ...	Bedakhli ki kaid ...	Uchchheda karibar niyam.
Enhancement ...	Barháná ...	Briddhi
„ Conditions of ...	Barháne ki sharten ...	Briddhir niyam.
„ Gradual ...	Rafte rafte barháná ...	Kramasah briddhi.
„ Progressive ...	Rafte rafte barháná ...	Krame krame briddhi.
„ Restriction on...	Barháne ki kaid ...	Briddi bishaye niyam.
Execution of decree ...	Ijrái digree ...	Decree jari.
Explanation ...	Tashrih ...	Artha karana.
Fallow ...	Parti ...	Patit.
„ new ...	Parti jadid ...	Nutan patit.

English.	Hindi.	Bengali.
Fallow, old ...	Parti kadim ...	Puratan patit.
„ for part of the year	Chaumas ...	
Farm ...	Thika ...	Ijara.
Forfeiture ...	Zabti ...	Sampatti danda.
„ Relief against...	Zabti ka iláj ...	Sampatti dander pratikár.
Full discharge ...	Fárighkhati ...	Fárkhati.
Holding ...	Jôt ...	Jôt.
„ Abstract of particulars of.	Khatian ...	Khatian.
„ at fixed rates ...	Sharah mukarrar par rakhi hui jôt.	Mukarrari háre bhumi bhog.
„ Conditions of ...	Jôt rahhne ki sharten ...	Jotbhoger niyam.
„ Occupancy ...	Hak dakbal ki jôt ...	Dakhali svatva prapta jôt.
Homesteads ...	Basgit zamin ...	Bastu bhumi.
Improvement ...	Zamin ki liákat barháná	Utkarsha sádhana.
„ Compensation for.	Liákat barháni ki liye taláfi.	Utkarsha sádhana nimitta kshati púran.
„ Registration of..	Liákat barháni ki registri	Utkarsha sádhana registari karana.
„ Right to make..	Zamin ki liákat barháw ká hak.	Utkarsha sádhana karibar svatva.
Illegal cesses ...	Be aini abwáb* ...	Áin biruddha abwáb.
„ „ Exaction of ...	Khilaf áin abwáb ká lena	Áin biruddha abwáb anyáya kariya lewa.
„ Interferences .	Áin ke khiláf dastandázi	Be áinimat hastakshep karan.
Incumbrance ...	Dain ...	Dàya.
„ Avoidance of ...	Dain rad karna ...	Dáya asiddha karna.
„ Instrument creating.	Dain paidá karne wáli dastávez.	Dáya srishtikári nidarsan patra.
Interest ...	Hak ...	Svártha.
„ Protected ...	Bacháe hue hak ...	Sanrakshita svártha.
Land ...	Zamin ...	Bhúmi ba jami.
„ Acquisition of ...	Zamin hasil karna ...	Bhúmi grahan.
„ Dearah ...	Dearah zamin ...	Diarah bhúmi.
„ Khamar† ...	Khamar zamin ...	Khamar bhúmi.
„ Determination of private.	Nij dakhili zamin ki tajviz.	Nij jami nirnaya karan.
„ Proprietor's private.	Malik ki nij dakhli zamin	Bhúsvámir nij jami.
„ Waste ...	Parti zamin or uftada zamin.	Patit bhúmi.
Landlord ...	Zamindar ...	Bhúmyákdhikári.
„ Inferior ...	Zamindar-i-matahat ...	Adhastana bhúmyádhikári.
„ Superior ...	Patta ...	Páttá.
Lease ...	Zamindar-i-mafáuk ...	Uchchatana bhúmyádhikári.
Lease, Expiration of ...	Patta ki miyad khatam hona.	Pattár miyáda atita.
Lessor ...	Patta dena wala ...	Pattádátá.
Limitation ...	Tamadi ...	Miyadá bá tamádi.
Manager ...	Manager ...	Kárjyadhyaksha.
„ Common ...	Manager ijmali ...	Sadhárán kárjyádhyaksha.

* Abwab, plural of bab, a gate, door, or way—now cesses imposed subsequently to the fixing of the asal standard of assessment. The word indicates the means by which alone it was thought a door was opened to increase the asal.

† Literally a threshing floor; lands for which money-rent was not paid, but the produce was divided on the threshing floor—contradistinguished from raiyati land.

APPDX. V.

English.	Hindi.	Bengali.
Measurement ...	Paimaish ...	Bhúmi máp.
„ Standard of...	Paimaish ka paimanah ...	Máper niyam.
Mortgagee ...	Rihn rakhne wala ...	Bandhakagrahitá.
Occupation ...	Dakhal ...	Dakhal.
„ Admitted to ...	Zamin par dakhal paya...	Dakhalprápta.
Owner ...	Malik ...	Malik.
Payment ...	Ada karna ...	Táká dewa.
„ Appropriation of	Ada kiyi-hui malguzari ko hisáb men láná.	Táká je rupe jama dite hoibe.
„ of rent ...	Malguzari ada karna ...	Khajanà dewa.
Presumption ...	Kiyas ...	Anumàn.
Produce ...	Paidawar ya jins ...	Fasal.
„ Appraisement of	Paidawar ki kankut ...	Fasal jáchái.
„ Division of ...	Batai ...	Fasal bibhága.
Proprietor ...	Malik ...	Bhusvami.
„ Registered ...	Registree kiye hue malik	Registari karà bhúmyadhikári vá bhusvami.
Provisions ...	Kaide ...	Bidhàn.
„ Miscellaneous...	Mutfarrik kaide ...	Bibidh bidhán.
Raiyat ...	Raiyat ...	Ráiyat.
„ holding at fixed rate.	Shaiah mukarrar par zamin rakhne wala raiyat.	Mukarrari háro je ráiyatera bhúmi bhóg kare.
„ Inferior ...	Raiyat-matahat ...	Adhastana ráiyat.
„ Non-occupancy ...	Ghair dakhalkar raiyat...	Dakhali svatva súnya ráiyat.
„ Occupancy ...	Dakhalkar raiyat ...	Dakhali svatva bisishta ráiyat.
„ Resident cultivator	Dehi Kashtkar ...	Khudkast.
„ Non-resident cultivator.	Pahi Kashtkar ...	Paikast.
„ Head raiyat ...	Jeth raiyat ...	Mandal.
„ Settled ...	Kaimi raiyat ...	Sthitibán ráiyat.
Under ...	* Shikmi ya kolaiti raiyat	Korfa ráiyat.
Rate ...	Sharah nirikh ...	Hár.
„ Prevailing ...	Sharah mamuli ya maruwaj.	Prachalita hár.
Receipts ...	Rasid ...	Dákhilá.
„ Effect of ...	Rasid ka asar ...	Dákhilár phal.
„ Forms of ...	Rasid ka namuna ya naksha.	Dákhilár pát.
„ Withholding ...	Rasid na dena ...	Dákhilá ná dewa.
Record ...	Ruedad ...	Likhan.
„ Entries in ...	Ruedad ki malain ...	Likhaner lekhá.
„ of-rights ...	Ruedad hakuk ...	Svatver likhan.
Record-of-rights, Publication of	Hakuk ke ruedad ka mushtahir karna.	Likhan prakásh karan.
Register ...	Register ...	Register.
„ of suits ...	Mukaddama ki register	Mukaddamar register.
„ Field ...	Khasra ...	Khasra or chitha.
Rent ...	Malguzari ...	Khájaná.
„ Alteration of ...	Malguzari ka badalná ...	Khájaná paribartan.
„ Arrears of ...	Baki malguzari ...	Báki khájaná.
„ Bar to recovery of ...	Malguzari ki wasuli ki kaid.	Khájaná áday karite ná para.

* Shikmi: this word is, in Gaya, applied to land, the rent or rate of rent of which has not been altered since the Permanent Settlement, though a cess may have been charged for growth of a special crop, such as opium, the cess being only charged when the special crop is grown.

English.	Hindi.	Bengali.
Rent Commutation of ...	Bhaoli ki jagah nagdi kaim karna.	Khájaná nagdán karana.
„ Deposit of ...	Malguzari amánat rakhna	Khájaná amánat.
„ Enhancement of ...	Malguzari ka barháná ...	Khájaná briddhi.
„ Fair and equitable ...	Wajib aur munasib malguzari	Upajukta or nyájya kháj aná.
„ free ...	Lakhiraj ...	Lakhiraj.
„ Fixity of ...	Malguzari ka mukarrar hona.	Khájaná mukarrar thaka.
„ Initial ...	Shuru ki malguzari ...	Prathamá sthaliya kháj aná.
„ Instalments of ...	Malguzari ki kist ...	Khájanár kisti.
„ Limit of ...	Malguzari ka had ...	
„ payable in kind ...	* Bhaoli malguzari ...	Sasya rupe deya khájaná.
„ Produce ...	Malguzari jins men ...	Fasli ba bháoli khájaná, gula dhanya.
„ Reduction of ...	Malguzari ka ghatáná ...	Khájaná kamána.
„ Settlement of ...	Malguzari ka bandobast karna.	Khájanár bandobast.
Revenue ...	Malguzari ...	Rájasva.
„ free ...	Lakhiraj ...	Lakhiraj.
„ officer ...	Afsar mál ...	Rájasva karmáchárí.
Rights ...	Hak ...	Svatva.
„ and liabilities ...	Hakuk-o-jawabdihi ...	Svatva o dáya.
„ Devolution of occupancy.	Hak dakhal ka dusre ko pahuncha.	Mrityú hoile dákhali svatva bartana.
„ Forest ...	Bankar ...	Bankar svatva.
„ of fishery ...	Jalkar ...	Jalkar.
„ Incident of occupancy.	Hak dakhal ke mutalliq batain.	Dakhali svatvaranushanga.
„ Occupancy ...	Hak dakhal ...	Dákhali svatva.
„ of pasturage ...	Charagah ka hak ...	Gochárán svatva.
„ Record-of ...	Ruedad hakuk ...	Svatver likhan.
Rules and presumptions ...	Kaide o kiyás ...	Vidhi o anumána.
Rules under Act ...	Act ke mutalik kaede ...	Ei áin matá vidhi.
Sale ...	Bikri ya nilam ...	Bikray va nilam.
„ Liability to ...	Bikri ke laik hona ...	Nilámá jogyatá.
„ proclamation ...	Nilami ishtihar ...	Nilamer ghoshaná patra.
„ To set aside ...	Nilam rad karna ...	Nílam anyathá karana.
Settlement ...	Bandobast ...	Bandobast.
„ Permanent ...	Davami bandobast ...	Chirasthávi bandobast.
Staple food-crops ...	Khane ki jins ki ám fasl en.	Pradhán utpádya khádya sasya.
Subletting ...	Shikmi patta dena ...	Korfabili karana.
Succession ...	Kaim makam hona ya warsa pana.	Uttarádhikára.
Surrender ...	Istifá dena ...	Istafá.
Survey ...	Paimaish ...	Jarípa.
„ *Cadastral* ...	Kistwar paimaish ...	Kshetrabant jarip.
Temporarily-settled districts.	Miadi bandobasti zile ...	Je jiláy kiyat kálín bandobasta thake.
Tenancy ...	Jót ya zamin rakhna ...	Prajá svatva.
„ Incidents of ...	Zamin rakhne ki nisbat baten.	Prajá svatver anushanga.
„ Sub-division of ...	Jót ki taksim ...	Prajá svatver bibhág.
Tenants ...	Asami ...	Prajá.

* Said to be corruption of bahuliya, abundance.

APPDX. V.

English.	Hindi.	Bengali.
Tenants, Classes of ...	Asami ki kismen . .	Prajáder sreni.
„ Inferior ...	Asami matahat ...	Adhastana prajá.
„ Under . .	Shikmi asami ...	Peṭáo prajá
Tenure ...	Darmiani hak . .	Madhya svatva.
„ holder . .	Darmiani hakdar .	Madhya svatvadhikárí.
„ Incidents of .	Darmiani hak ke mutalik baten	Madhya svatver anushanga
„ Permanent .	Dayami hak darmiani . .	Káemi madhya svatva.
„ Sale of ...	Hak darmiani ka nilám .	Madhya svatver niláma.
„ Service ...	Chakran zamin ...	Chákrán taluka
„ Transfer of ...	Hak darmiani ka intikal	Madhya svatver hastántara
„ Transmission of ...	Hak darmiani ka intikal	Madhya svatver uttarádhikara
Use of land . .	Zamin ka istimál . .	Bhúmi byabahár
Utbandi . .	Utbandi . .	Uthbandi
To violate conditions . .	Sharton ka torna ...	Niyam langhan karan

Some Terms used in Zamindari Accounts.

English.	Hindi.	Bengali.
Field register ...	Khasra .	Khasra or chitha
Abstract of particulars of holding.	Khatian ...	Khatian
Record of interests of proprietors	Khewat ...	Khebat.
Record of the annual rent demand or rent roll.	Jamabandi or hastabud*	Jamabandi.
Record of daily receipts from tenants	Siyaha . .	Seha
Abstract of siaha and jamabandi	Arsattá ...	Thoka
Record showing demand, realization and balance.	Jamá wasilbaki .	Bakijai.
Abstract of receipt and disbursements	Jama kharach ...	Jamakharach.
Record showing the name of each tenant, the total area of holdings and rates of rent	Terij assimwar . .	Dagbili khatian.
Abstract of village area and accounts	Goshwarah . .	
Village expenses ...	Dih kharcha ...	Dihi kharcha.
Miscellaneous receipts, such as fisheries, &c †	Sair ...	Sair.
Proprietor's private land	Zeraat, sir, nankar or kamat ‡	Sir, khamár or nij-jote.

* Hastabud, literally hast-o-búd, what "is and was," used in Behar for jamabandi, also general inquiry into value of land before harvest.

† Literally, what moves.

‡ Zeraat, cultivation, used for land cultivated under indigo by thikadars in Behar, and thus often confounded with *nij* land.

Nankar means subsistence, *Sir* is the Sanskrit for a plough,

English.	Hindi.	Bengali.
Expenses of collection ...	Akhrajat ...	Akhrajat.
Rent in suspense account	Hajat ...	Hajat.
Shares of a revenue-paying estate.	Pattidar * ...	Pattidar.
	Free Grants.	
Rent-free grants ...	Brit or jagir † ...	Jagir.
„ for the worship of Brahma.	Brahmattar ...	Brahmattar.
„ for the worship of Bishnu.	Bishnuprit ...	Bishnuprit.
„ for the worship of Siva.	Sivattar ...	Sibattar.
„ dedicated to Pirs.	Pirottar ...	Pirattar.
„ for ghatwals ...	Ghatwali ...	Ghatwali.
„ made to village watchmen.	Goraiti jagir ...	Chaukidari chákrán.
„ made to the family of a man killed in the Rajah's service.	Marwat ...	(*Nil.*)
Grants of land at reduced rent.	Minhai or mááfi ...	Aima. ‡
Assigned by a Rajah for maintenance to a younger son or brother.	Khorish ...	„
Royal grants in perpetuity.	Altamgah ...	Altamgah.

* *Pattidars* are occupant sharers of a revenue-paying estate, each managing his share separately, but paying his revenue through one of the sharers called a *lumberdar*.

† Birt, corruption of vriti, a small plot of land for a house generally with some ground round it, often given to Brahmans.

‡ Plural of *Imam*, originally a grant to religious Mahomedans.

Appendix VI.

ADDITIONAL NOTES.

Law of Santal Parganas (p. 3).—Reg III of 1872 has been amended by the Santal Parganas Laws Regulation, 1886. In the Schedule to this latter Regulation are specified the Regulations and Acts now in force in the Santal Parganas.

Interests in lands in Rungpore (pp. 33 and 34).—The Commissioner of Rajshahye, Mr. E. E. Lowis, in a report on the re-settlement of the Jalpaigori District, No. 352 Rct., dated 23rd October, 1888, describes the interests in land in that district, which are similar to those of Rungpore as follows:—

"*Jotedar*—Is a person possessing a permanent, heritable, transferable right in the area of land settled with him. His title accrues immediately on his getting the lease, and is not confirmed, or improved, in consequence of occupancy for any given period. The rent cannot be enhanced during currency of settlement, but is enhanceable on such terms as Government may order on the expiry of the settlement. The land in the jotedar's possession must be re-settled with him on the expiry of a settlement subject to the rules in the matter of waste land, and to the right of Government to resume during the currency of the lease, or at its expiry, land required for any public purpose, proportionate decrease of rent for land so resumed being allowed and compensation granted for any permanent improvements on the land effected by the holder.

Chukanidar—Is a person who holds within a jote, on very much the same terms as the jotedar himself; his title is permanent, heritable, and transferable; it accrues on his entering on possession; his original rent is a matter of contract, but it is not enhanceable during the currency of the settlement, but may be enhanced at re-settlement. The jotedar has no power to resume land, that is the prerogative of Government alone, who may resume land in a chukan in the same way as jote land may be resumed.

Dar Chukanidar—Has similar rights as above within a chukan.

Raiyat—Is a cultivator who pays a money-rent and can acquire rights of possession in his holding after twelve years' occupancy; after having acquired an occupancy-right, his rent is not enhanceable, except by an amicable settlement with his superior holder, or by a regular suit which will be decided according to the provisions of Act X of 1859. A raiyat has no rights until he has been twelve years in occupancy, except that he cannot be ousted as long as he pays his rent, except under decree of court.

Praja—Has no rights; he is an adhyar who pays a corn-rent in the shape of half produce."

It would seem, then, that in Jalpaigori a jotedar is a tenure-holder, and a chukanidar and a dar-chukanidar are under tenure-holders. The occupancy-raiyat is the "raiyat" of Mr Lowis's report.

Purchase by occupancy-raiyat of share in holding (section 22, p. 65).—An occupancy-raiyat, who commenced to occupy his holding in 1871, purchased in 1878 a fractional share in the proprietary interest in the holding. *Held*, that there was nothing in Bengal Act VIII of 1869 to prevent an occupancy-right being acquired by the raiyat, if after his purchase he continued to hold the land as a raiyat and the relation of landlord and tenant existed between himself on the one hand, and the proprietors on the other, and if the period for which he so held extended for twelve years from the date of the commencement of his holding. (*Gur Baksh Rai* v. *Jio Lal Rai*, I. L. R., 16 Calc., 127.)

Sub-division of tenancy-right of appeal (sections 88, 153, pp. 165, 223).—When on behalf of a defendant, it was contended, that there had been a division of the tenancy under which he was liable for only half the rent, it was held that an appeal lay, inasmuch as there was a question of the amount of rent annually payable. It was further held that rent-receipts did not amount to a written consent to a division of the tenancy, as required by section 88 of the Bengal Tenancy Act. (*Abhay Charan* v. *Sashi Bhushan Basu*, I. L. R., 16 Calc., 155.)

Managers, (section 93, p. 171).—In a case in which an application was made by twelve co-sharers in a property consisting of numerous estates, tenures, and raiyati holdings, calling upon the remaining four co-sharers in the property to show cause why a common manager should not be appointed under section 93, it was held that the Court should, before granting the application, call upon the applicants to state whether all of them are entitled in common to the various estates and tenures, and if not so entitled, should call upon them to divide themselves into as many groups as there are properties held by them in common; and, in the latter case, each group of share-holders should put in separate applications on which separate Court-fees should be levied The notice in the case of tenures should be as provided by section 93 of the Act, and should be of the same character and to the same effect as in the case of estates. (*Fazlali Chaudhri* v. *Abdul Mazid Chaudhri*, I. L. R., 14 Calc., 659.)

Powers of a Collector under sections 69—71 (p. 138).—The Deputy Collector of Howrah has been vested with powers of a Collector under sections 69 to 71 by Government Notification of 28th May, 1886. (*Calcutta Gazette*, June 2nd, 1886, pt. I. p. 652.)

Court-fees in suit for ejectment (section 144, p. 214).—In a suit to eject a defendant as being a tenant at-will, the Court-fee upon the plaint or memorandum of appeal is 8 annas under Sch. II, cl. 5 of Act VII of 1870. (*Nurjahan* v. *Morfan Mandal*, 11 C. L. R., 91.)

INDEX.

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